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92-291

Supreme Court, U.S.
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NUMBER 92-

IN THE SUPREME COURT OF THE UNITED STATES

OCTOBER TERM, 1992

THE CONFERENCE OF AFRICAN UNION FIRST COLORED METHODIST PROTESTANT CHURCH and DELBERT L. JACKSON,

Petitioners,

v.

MOTHER AFRICAN UNION FIRST COLORED METHODIST PROTESTANT CHURCH, MORRIS A. COMEGYS, and SARA B. GARDNER,

Respondents.

ON PETITION FOR WRIT OF CERTIORARI TO THE SUPREME COURT OF THE STATE OF DELAWARE

PETITION FOR WRIT OF CERTIORARI

K. KAY SHEARIN
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Counsel for Petitioners

I. QUESTIONS PRESENTED

A. Did the Court of Chancery of the State of Delaware violate the First Amendment by transferring real estate from a hierarchical church to its dissident former members?

B. Did the Court of Chancery commit reversible error by sanctioning Petitioners' counsel under Del.Ch.Ct.R. 11?

C. Is the error of the Court of Chancery, and of the Supreme Court of the State of Delaware in dismissing the appeal of the Chancery Court's judgment, so manifest on its face as to warrant summary reversal under this Court's Rule 16.1?

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IV. OPINIONS BELOW

The 25 June 1992 order of the Supreme Court of the State of Delaware--dismissing, without a separate opinion, Petitioners' appeal of the Chancery Court's 20 May 1992 judgment order--is set forth in the appendix at A001-04.

The Chancery Court's 20 May 1992 final order/judgment depriving Petitioners of ownership of the Church's real property is set forth at A005-08; the Chancery Court's opinion supporting that order is set forth at A030-98 and unofficially reported at [1992] Del.Corp.Lit.Rep. 10536 (Del.Ch. 1992). The appendix to that opinion [A080-98], which was the Chancery Court's 15 May 1991 opinion granting Respondents a preliminary injunction, was unofficially reported at [1991] Del.Corp.Lit.Rep. 8741 (Del.Ch. 1991).

The Chancery Court's 20 May 1992 order/ opinion sanctioning Petitioners' counsel is set forth at A009-29.

V. JURISDICTION

The judgment as to which Petitioners invoke the Court's jurisdiction is the 25 June 1992 Order [A001] of the Supreme Court of the State of Delaware, in No. 215, 1992, dismissing Petitioners' appeal of the 20 May 1992 judgment [A005] and order [A009] of the Chancery Court, in C.A.No. 12055. The parties named in the caption were the only parties to those proceedings; Petitioner non-stock religious corporation has no parent or subsidiary corporations.

This Court's jurisdiction is invoked under 28 U.S.C. §1257(a) and this Court's Rules 10.1 (b)&(c) and 13.1: The Delaware Supreme Court's 25 June order violated Petitioners' title, right, and privilege--

set forth in the First Amendment to the Constitution--to use their church building and govern their church without interference by civil/judicial authorities.

By allowing the Chancery Court's judgment to stand, Delaware's court of last resort decided this First Amendment federal question: (1) in direct conflict with: (a) the decision of the United States Court of Appeals for the District of Columbia Circuit in Cleaver v. Conference of African Union First Colored Methodist Protestant Church, 240 F.2d 57 (D.C.Cir. 1956), a case factually the same as this one and involving the same church; and (b) the decision of California's Court of Appeal in Korean United Presbyterian Church of Los Angeles v. Presbytery of the Pacific, 230 Cal.App. 3d 480, 281 Cal.Rptr. 396 (App. Dep't Super. Ct. 1991), cert. denied, 60 U.S.L.W. 3520 (1992); and (2) in direct conflict

with this Court's applicable decisions from Watson v. Jones, 80 U.S. 679 (1871), through Kedroff v. St. Nicholas Cathedral, 344 U.S. 94 (1952), Kreshik v. St. Nicholas Cathedral, 363 U.S. 190 (1960), Presbyterian Church in the United States v. Mary Elizabeth Blue Hull Memor'l Presbyterian Church, 393 U.S. 440 (1969), Maryland & Virginia Eldership v. Church of God, 396 U.S. 367 (1970), Serbian Orthodox Diocese v. Milivojevich, 426 U.S. 696 (1976), Jones v. Wolf, 443 U.S. 595 (1979), and Little v. First Baptist Church, 475 U.S. 1148 (1986).

VI. CONSTITUTIONAL PROVISIONS & RULE

Amendment I:

> Congress shall make no law respecting an establishment of religion, or prohibiting the free exercise thereof . . .

Amendment V:

> No person shall be . . . deprived of life, liberty, or property, without due process of law; nor shall private property be taken for public use, without just compensation.

Amendment XIV, Section 1:

> All persons born or naturalized in the United States, and subject to the jurisdiction thereof, are citizens of the United States and of the State wherein they reside. No State shall make or enforce any law which shall abridge the privileges or immunities of citizens of the United States; nor shall any State deprive any person of life, liberty, or property, without due process of law; nor deny to any person within its jurisdiction the equal protection of the laws.

Del.Ch.Ct.R. 11 is set forth at A021-22 of the Appendix.

VII. STATEMENT OF THE CASE

In 1813 Peter Spencer and certain other persons incorporated in Delaware the Union Church of Africans, elected trustees of the corporation, bought real estate on which they built the denomination's first church ("the Mother Church"), and adopted their first Book of Discipline. Union Church of Africans v. Sanders, 6 Del. (1 Houst.) 100, 101-103 (Del. 1855). The corporation,

which came to be called the "African Union Church," grew by organizing congregations in Delaware, New Jersey, Pennsylvania, New York, and Connecticut, all of them governed by the Book of Discipline and superintended by the unincorporated "Yearly Conference" (later, "Annual Conference") [Id. at 104].

Ellis Sanders became a member of the Union Church, then a preacher, then a deacon, then the elder in charge of the congregations in the southern half of the denomination [Id. at 105-06], and the Book of Discipline gave him the privilege to preach in any church in the denomination, but the trustees of the Mother Church congregation excluded him from that church, so in 1852 he sued the denomination in Delaware's Superior Court for a writ of mandamus requiring the denomination to enforce its own by-laws by causing the Mother Church to admit him to preach there [Id. at 106]. The Su-

perior Court first denied him the writ, then granted it on reargument, and the denomination appealed [Id. at 106-07].

The Court of Errors and Appeals found the facts to be as stated supra [Id. at 123], ruled that the appeal would lie [Id. at 114-15], and reversed the Superior Court's writ [Id. at 127] on grounds of separation of church and state [Id. at 133] and free exercise of religion [Id. at 126].

The denomination's 1813 Articles of Association provide, inter alia:

> Article 2. The said corporation shall have, hold, possess and enjoy the temporal property which they have at this time, or shall hereafter acquire, in trust for the religious uses of the ministers and preachers of the said Union Church, for them and their African brethren and their descendants of the African race, and also for the ministers and teachers of the African brethren duly licensed and ordained according to the discipline adopted by the corporation. [Id. at 102; Plt. Tr. Ex. 3 (A037-38)].
>
> Article 6. . . . [I]f it happens that the members shall become divided in

> opinion and a majority of them shall be unwilling to be governed by the Rules and principles that this Church is founded on, such of them so swerving from the true principles thereof shall be no longer Members of said "Union Church." And if there should happen to be no more of the Members of this Corporation than one maintaining the Rules that one shall hold the right and prerogative of the said Church. And that the Bye-Laws and Regulations which shall be made by the Trustees from time to time together with these "Articles of Association" shall be deemed and taken to be and shall be the true foundation of said Church, and the foundation on which the said Corporation shall exist.

L. Baldwin, The Mark of a Man: Peter Spencer and the African Union Methodist Tradition 75 (1987); A046-47.

Real property in Delaware was conveyed to "The African Union Church" corporation in July 1813 [Plt. Tr. Ex. 7] and August 1837 [Plt. Tr. Ex. 5] and to "Union Church of African Members" in July 1905 [Plt. Tr. Ex. 6].

In 1924 the Mother Church congregation recorded, in New Castle County, Delaware,

a document certifying that that "Congregation of the African Union Church" had, at a duly called meeting on 20 June 1924, increased the number of its trustees from 7 to 9 and elected 9 named persons to staggered terms as trustees, and three-fourths of those trustees had voted to change the name of the congregation to "Mother African Union First Colored Methodist Protestant Church." [Plt. Tr. Ex. 4.] Although no evidence of that congregation's incorporation was ever introduced, that document referred to the Mother Church congregation as "the said corporation."

At a convention in Maryland in 1865 representatives of the "African Union Church" and the "First Colored Methodist Protestant Church" voted to unite into the "African Union First Colored Methodist Protestant Church" [Book of Discipline at ii]. In 1941 the denomination reincor-

porated [n. 13, A095], as the "African Union First Colored Methodist Protestant Church," to merge the unincorporated Yearly Conference into it and "unite the Church Government . . . under the Doctrine and discipline of the African Union First Colored Methodist Protestant Church," and in 1953 it changed its corporate name to "The Conference of African Union First Colored Methodist Protestant Church," which is still Petitioner's official name, but it also still uses the name "African Union Methodist Protestant Church."

Until Respondents filed this suit in Chancery Court in April 1991, there was never any suggestion that Petitioner denomination was not the church founded by Peter Spencer in 1813, and numerous historical markers, official proclamations, and history books said it was:

Peter Spencer, who established the

> first completely independent black denomination in 1813, was a Delawarean. Spencer's first church, the Union Church of Africans, was built by congregants who followed the theological and ethical tenets of Methodism. . . . Today the direct successor to Spencer's first church is the Mother African Union Methodist Protestant Church in Wilmington. . . . [T]he original Union Church of Africans has been torn down and replaced by a public plaza and the Boggs Federal Building.

97th Cong., 1st Sess., 127 Cong. Rec. (July 30, 1981)(remarks of Sen. Biden).

> [B]ack in 1813, when the Reverend Peter Spencer founded the first fully independent black American religious denomination in Wilmington, Delaware. . . . [t]he Reverend Peter Spencer and the first congregation of that first independent black religious denomination understood that when they opened their own church doors to the future . . .

98th Cong., 2d Sess., 130 Cong. Rec. (Aug. 9, 1984)(remarks of Sen. Biden).

In 1953 a majority of the members of the AUMP congregation in Washington DC voted to secede from the denomination because the presiding prelate would not appoint the pastor they wanted. St. Paul's AUFCMP

Church was separately incorporated in the District of Columbia and held legal title to its church building, so the denomination sued it and its trustees in federal court for ownership of the building. After trial the federal judge entered judgment for the denomination [A099-A105], the dissidents appealed, and the appellate court affirmed. Cleaver v. Conference of African Union First Colored Methodist Protestant Church, 240 F.2d 57 (D.C.Cir. 1956).

In 1969 the original Mother Church site, conveyed to the African Union Church in 1813 [Plt. Tr. Ex. 7], was sold and the proceeds used to buy an existing church building, titled in the Mother Church corporation [Plt. Tr. Ex. 10]. All the congregations in the denomination continued to use that building as the denominational mother church.

Respondent Gardner testified the Book

of Discipline written by Bishop Spencer in 1813 and amended several times over the years was the Conference's bylaws and had been the Mother Church's bylaws from 1813 until 1991 [Tr. Trans.: l. 17, p. 295 to l. 23, p. 299], and Respondent Comegys testified the Book of Discipline set forth the Mother Church's trustees' duties [Tr. Trans.: ll. 21-23, p. 367]. No other corporate bylaws for the Mother Church were ever introduced, and Gardner's testimony that there were none [Tr. Trans.: ll. 7-10, p. 296; ll. 16-23, p. 299] was uncontradicted, but the Vice Chancellor relied on the Mother Church's bylaws which he said were separate from the Conference's [A037-38 & n. 2; A042; A048].

In January and April 1991 the Annual Conference, which is the AUMP Church's legislative body comprising clerical and lay representatives elected by the members of

every congregation in the denomination, adopted amendments to the bylaws specifying that property titled in the congregations was held in trust for the Conference and requiring trustees of the congregations to execute documents relating to church real estate when directed to do so by the Conference [Plt. Tr. Ex. 14; Tr. Trans.: l. 1, p. 77 to l. 1, p. 78; ll. 18-21, p. 88].

Pursuant to those bylaws, which were adopted by large majorities that included all the Mother Church's representatives, on 6 April 1991 Respondent's pastor executed a quit claim conveying the Mother Church's interests in its real property to Petitioner Conference [Plt. Tr. Ex. 25]. Two days later the denomination removed the Mother Church's pastor and appointed Thomas Moon as his replacement, but on 9 April some members of the Mother Church held a meeting where they voted to leave

the AUMP Church, and when Pastor Moon arrived to take up his duties, they had police order him off the premises [A041-42]. The Vice Chancellor said the bylaws did not specify a quorum for that meeting, so 8 Del.C. §215(c) applied [A041-44], but the Book of Discipline did provide ["Rules of Order," Article VI, ¶G, p. 48] that Robert's Rules of Order controlled any point not specified in the Discipline, and Robert's provides that absent a special rule, "the quorum of every assembly is a majority of all the members" [§43, p. 85 (Pyramid ppbk. 1967)]. The Discipline also provided: once a church joined the Conference it could not thereafter "reject any part or provision thereof of the Book of Discipline and the regulations" [Art. III, ¶6, p. 35]; the trustees of a member church are prohibited from calling any meeting except through the pastor and to carry out their

routine duties [Art. XII, p. 71]; and the pastor is the chairman of the board of trustees and "cannot and shall not call any meetings(s) to change the name of, or in any way change the status of, the church in the Conference" [Art. X, pp. 56-57].

Although the Discipline provided that, by their vote to secede, Respondents had ceased to be trustees and members of the Church, the denomination formally excommunicated them [Tr. Trans.: l. 24, p. 175 to l. 6, p. 176; ll. 11-17, p. 370], and Pastor Moon and the members who remained faithful to the Discipline elected new trustees [A045]. On 18 April 1991 the two individual Respondents filed this suit against Petitioner Jackson, and at the TRO hearing the next day Petitioners first raised the Constitutional issues sought to be reviewed here; the Chancery Court addressed those questions in its opinion

granting preliminary injunction [A090] and in its judgment [A035-39].

On the second day of the trial, Respondents' attorney Thomas S. Neuberger intimidated Pastor Moon into leaving the courthouse, and Petitioners' attorney complained to the Vice Chancellor [A114], who declined to take action. After the case was tried (16-17 September 1991), but before the Chancery Court delivered its judgment (22 April 1992), the Vice Chancellor instructed Petitioners' attorney K. Kay Shearin to schedule a funeral for a dissident's spouse, Shearin asked the Vice Chancellor to put that instruction on the record so she could seek appellate review [¶2.c, A107], the Vice Chancellor refused to do so [n. 2, A017-18], and Shearin refused to schedule the funeral [A016].

The Vice Chancellor then instructed Respondents' attorneys to move to hold Shear-

in in contempt, they so moved on 3 April, on 6 April Shearin moved [A106-13] to withdraw her appearance for ethical reasons, and on 30 April the Vice Chancellor declined to hold Shearin in contempt [A017]. The Vice Chancellor then instructed Respondents' attorneys to move to sanction Shearin under Del.Ch.Ct.R. 11 [A116-19].

On 22 April the Vice Chancellor had delivered his judgment in the case, and by a letter dated 13 May Shearin complained to the Court on the Judiciary that the Vice Chancellor's conduct throughout the case had been aberrational. On 20 May the Vice Chancellor sanctioned Shearin under Rule 11 [A009-29], and on 29 May the Court on the Judiciary summarily dismissed the complaint against the Vice Chancellor [In re: Hon. Jack B. Jacobs, No. 9, 1992].

On 23 April Petitioners noticed an appeal of the Chancery Court's judgment,

but on 20 May Delaware's Supreme Court dismissed that appeal as interlocutory [Conference of AUFCMP Church v. Mother AUFCMP Church, No. 174, 1992]. On 20 May the Chancery Court issued its amended final judgment order [A005] and order sanctioning Shearin [A009]; on 26 May Petitioners noticed an appeal of both orders, and in their 15 June response to the Supreme Court's order to show cause Petitioners raised the federal questions sought to be reviewed here, saying:

> [T]he Chancery Court's judgment is in direct, unreconcilable conflict with:
> (a) Delaware's highest court's findings of fact and law in Union Church of Africans v. Sanders, 6 Del. (1 Houst.) 100 (Del. 1855);
> (b) the rulings in the other two cases with the same facts in other jurisdictions, namely, Cleaver v. Conference of African Union First Colored Methodist Protestant Church, 240 F.2d 57 (D.C.Cir. 1956), and Conference of African Union First Colored Methodist Protestant Church v. Shell, No. 4165 of 1989, Court of Common Pleas of Lancaster County PA, 7 May 1992; and
> (c) the entire line of church-property

cases including: Watson v. Jones, 80 U.S. 679 (1871); Kedroff v. St. Nicholas Cathedral, 344 U.S. 94 (1952); Kreshik v. St. Nicholas Cathedral, 363 U.S. 190 (1960); Presbyterian Church in the United States v. Mary Elizabeth Blue Hull Memor'l Presbyterian Church, 393 U.S. 440 (1969); Serbian Orthodox Diocese v. Milivojevich, 426 U.S. 696 (1976); Jones v. Wolf, 443 U.S. 595 (1979); Little v. First Baptist Church, 475 U.S. 1148 (1986), and Corporation of Presiding Bishop of Church of Jesus Christ of Latter-Day Saints v. Amos, 483 U.S. 327 (1987).

On 25 June the Supreme Court dismissed the appeal [A001] without addressing those federal questions.

VIII. ARGUMENT FOR ALLOWING WRIT

It is manifest that the Chancery Court erred in finding that the 1813 Articles of Association were the Mother Church's, not the Conference's: Delaware's then-highest court's findings in Sanders, 6 Del. at 101-02, 123, while witnesses to the denomination's founding were still alive, were conclusive of that issue, and the Chancery

Court was required to give full faith and credit to the District of Columbia's then-highest court's findings [A100] in Cleaver, 240 F.2d at 57, to the same effect.

The Chancery Court also erred in finding the Book of Discipline was not the corporate bylaws of both the Conference and the Mother Church, when the courts in Sanders and Cleaver both found it was, Respondent Gardner so testified, and there was no evidence whatsoever that it was not.

The Articles of Association specified that all property ever acquired was held in trust for the denomination [Art. 2] and that as long as any members remained faithful in a schism, they were the true members of the church, and the dissidents were not [Art. 6]. The secular language of those Articles and the bylaws in the Discipline required the Chancery Court to rule in Petitioners' favor in this case. Jones v.

Wolf, 443 U.S. 595 (1979); Presbyterian Church in the United States v. Mary Elizabeth Blue Hull Memor'l Presbyterian Church, 393 U.S. 440 (1969).

At least eight other congregations of Petitioner denomination have filed litigation to secede or to void deeds for their buildings, and there have already been inconsistent rulings: In Chester County PA the Court of Common Pleas entered default judgment for the dissidents, but in Lancaster County PA the Court of Common Pleas entered judgment, after trial, for the Conference, and that case is now on appeal. Still pending are suits filed by four congregations in Delaware's Chancery Court, one in Wicomico County MD's Circuit Court, and one removed to federal court in the District of New Jersey from Superior Court. There is also pending in the Third Circuit an appeal of the dismissal of the 42 U.S.C.

§1983 suit in the District of Delaware discussed at A064-71.

This repetitive litigation is not only throttling Petitioner denomination but also squandering precious judicial resources, and a summary reversal of the Chancery Court's judgment, under Rule 16.1, would end the litigation forthwith. As in Kreshik v. St. Nicholas Cathedral, 363 U.S. 190 (1960), there is no new issue in this case, and the reasons the Court must act are that the judgment below is in direct conflict with prior rulings of the Court and with rulings in other jurisdictions.

The Chancery Court's order sanctioning Petitioners' attorney may also be reversed summarily because that court's error is clear from its opinion [A022-26]: Del.Ch. Ct.R. 11, which reads the same as Fed.R. Civ.P. 11, is intended to discourage attorneys from filing papers not grounded in

fact or law [A021], the Vice Chancellor found that Shearin had shown no basis in fact for saying Moon was Respondents' agent [A025] and no basis in law for saying she could not ethically schedule the funeral with him [A026], and the record showed her factual [A116-17] and legal [A108-10] bases for those statements. Shearin's position was always that she represented both Bishop Jackson (a defendant in the suit) and Pastor Moon (not a party but employed by the plaintiff congregation), and she could not schedule the funeral, not because Moon was not her client, but because Jackson and the Conference were, and it would violate her ethical duty to them, as well as her First Amendment right not to be forced to participate in a religion she did not espouse.

It was therefore an abuse of the Chancery Court's discretion to hold Shearin in

violation of Rule 11, Cooter & Gell v. Hartmarx Corp., 110 S.Ct. 2447, 2457-61 (1990), so that order must be reversed.

Respectfully submitted,

K. KAY SHEARIN
Attorney for Petitioners

92-261

Supreme Court, U.S.
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NUMBER 92-

IN THE SUPREME COURT OF THE UNITED STATES

OCTOBER TERM, 1992

THE CONFERENCE OF AFRICAN UNION FIRST COLORED METHODIST PROTESTANT CHURCH and DELBERT L. JACKSON,

Petitioners,

v.

MOTHER AFRICAN UNION FIRST COLORED METHODIST PROTESTANT CHURCH, MORRIS A. COMEGYS, and SARA B. GARDNER,

Respondents.

ON PETITION FOR WRIT OF CERTIORARI TO THE SUPREME COURT OF THE STATE OF DELAWARE

APPENDIX TO PETITION

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IN THE SUPREME COURT OF THE
STATE OF DELAWARE

THE CONFERENCE OF AFRICAN UNION FIRST COLORED METHODIST PROTESTANT CHURCH and DELBERT L. JACKSON,
Defendants-Below,
Appellants,

v.

MOTHER AFRICAN UNION FIRST COLORED METHODIST PROTESTANT CHURCH, MORRIS A. COMEGYS, and SARA B. GARDNER,
Plaintiffs-Below,
Appellees.

No. 215, 1992

Submitted: 15 June 1992
Decided: 25 June 1992

Before VEASEY, Chief Justice,
MOORE & WALSH, Justices.

O R D E R

This 25th day of June, 1991, it appearing that:

(1) On May 26, 1992 the appellants filed a notice of appeal purporting to appeal from an order of the Court of Chancery dated May 20, 1992. That order, titled, "AMENDED FINAL ORDER AND JUDGMENT,"

inter alia, granted injunctive relief in favor of appellees but expressly reserved jurisdiction to the Court of Chancery "to determine any application in matters pending as of May 4, 1992" and specifically, to award counsel fees arising from a determination that appellant's counsel had violated chancery Court Rule 11. As of the date of the filing of this appeal, the Court of Chancery had not entered any further order implementing its retained jurisdiction.

(2) On May 29, 1992, appellants were directed to show cause why this appeal should not be dismissed as an appeal from an apparent interlocutory order, taken without compliance with Supreme Court Rule 42. Appellants have responded to the Notice to Show Cause and contend that the order appealed from is final and appealable because the trial court has labeled

its order as "FINAL."

(3) An order is final and appealable when the trial court has clearly declared its intention that the order be the court's final act in disposing of all justiciable matters within its jurisdiction. J. I. Kislak Mortgage Corporation of Delaware v. William Matthews, Builder, Inc., Del. Supr., 303 A.2d 648, 650 (1973). The mere titling of an order as a "Final Order" is not dispositive of its finality for purposes of appeal. Gaffin v. Teledyne Inc., Del. Supr., No. 178, 1991, Moore, J. (Aug. 23, 1991) (ORDER). In its May 26, 1992 order the Court of Chancery expressly retained jurisdiction to award counsel fees and costs and to rule upon any matter pending as of May 4, 1992. By the clear terms of its order, the trial court intended to dispose of other matters pending before it. Notwithstanding the

designation of its order as "FINAL" the Court of Chancery's order of May 26, 1992 must be viewed as interlocutory.

(4) This Court's authority to receive appeals in civil cases from interlocutory orders of a trial court must be exercised within the limits of Supreme Court Rule 42. Absent compliance with Rule 42, this Court must decline to exercise its appellate power. Stroud v. Milliken Enterprises, Inc., Del. Supr., 552 A.2d 476, 481-82 (1989). Since the appellants made no effort to comply with provisions of Rule 42, this Court has no option other than to dismiss the appeal.

NOW, THEREFORE, IT IS ORDERED pursuant to Supreme Court Rules 29(b) and 42 that this appeal be, and the same hereby is

DISMISSED.

BY THE COURT

/s/ Joseph Walsh
Justice

IN THE COURT OF CHANCERY OF THE STATE
OF DELAWARE IN AND FOR NEW CASTLE COUNTY

MOTHER AFRICAN UNION FIRST COLORED
METHODIST PROTESTANT CHURCH, et al.
Plaintiffs,

v.

THE CONFERENCE OF AFRICAN UNION FIRST
COLORED METHODIST PROTESTANT
CHURCH, et al.,
Defendants.

C. A. No. 12055
Entered: 20 May 1992

AMENDED FINAL ORDER AND JUDGMENT

This 20th day of May, 1992, after trial in this case and post trial briefing, in accordance with the Memorandum Opinion issued by the Court of April 22, 1992.

NOW, THEREFORE, IT IS ORDERED, ADJUDGED, DECREED AND DECLARED THAT:

(a) The defendants, and their agents, employees, servants, officers, attorneys, successors, assigns, and all others acting in concert or participation with them, including, but not limited to, Rev. Thomas E.

Moon and Rev. Jonah I. Lindsay, are hereby enjoined and restrained from interfering with the quiet title, operation, use, enjoyment and governance of the properties of the Mother African Union First Colored Methodist Protestant Church (the "Mother Church") located at West Ninth and Franklin Streets, Wilmington, Delaware, 125 West 38th Street, Wilmington, Delaware, and Mount Olive cemetery found on Lancaster Avenue in New Castle County, Delaware. Said quiet operation, use, enjoyment and governance resides solely in the Mother Church, its duly elected trustees, its members, and their successors.

(b) The nine duly elected incumbent trustees of the Mother Church are declared to be Morris A. Comegys, Sara B. Gardner, Mary K. Walker, Jane J. Gibbs, John J. Jackson, Lydia C. Watson, Anna B. Cassidy, Lydia Clayton, and Patricia Wallace.

(c) The members of the Mother Church as of April 9, 1991, are the 229 persons listed in Plaintiffs' Trial Exhibit 20.

(d) The defendants and all others identified in paragraph (a) above are enjoined and restrained from recording in the future any further deeds, encumbrances, or other documents relating to the title to the properties identified in paragraph (a) hereof.

(e) The defendants, and all others identified in paragraph (a) above, are hereby enjoined and restrained from (i) holding themselves out as having any ownership interest or control in the above identified properties and any other property of the Mother Church, and (ii) interfering with worship services, funerals or any other religious practices conducted by that corporation.

(f) The Indenture, dated April 6,

1991, between the Mother Church and the Conference of African Union First Colored Methodist Protestant Church recorded with the office for the Recording of Deeds in and for New Castle County, Delaware, in Book No. 1160, page 179, is hereby declared null and void ab initio. Plaintiffs shall record this Order with said office and cause this Order to be so indexed so that the records of the Recorder of Deeds will reflect the invalidity of that Indenture.

(g) The counterclaim filed by the defendants is dismissed with prejudice.

(h) The Court retains jurisdiction to determine any applications or matters pending as of May 4, 1992. Plaintiffs shall make any application for fees and costs in this action within 30 days from the entry of this Order.

/s/ Jack B. Jacobs
Vice Chancellor

IN THE COURT OF CHANCERY OF THE STATE
OF DELAWARE IN AND FOR NEW CASTLE COUNTY

MOTHER AFRICAN UNION FIRST COLORED
METHODIST PROTESTANT CHURCH, et al.
Plaintiffs,

v.

THE CONFERENCE OF AFRICAN UNION FIRST
COLORED METHODIST PROTESTANT
CHURCH, et al.,
Defendants.

C. A. No. 12055
Entered: 20 May 1992

Jacobs, Vice Chancellor

MEMORANDUM OPINION

During the course of a contempt proceeding against defendants' counsel, K. Kay Shearin, Esquire, it came to the Court's attention that she may have violated Chancery Court Rule 11. Because of the seriousness of the matter involved, the Court, sua sponte, directed counsel to brief that issue, and the briefing is now completed. This is the Opinion of the Court on the issue of whether Ms. Shearin

has violated Rule 11.

I.

The relevant facts are uncontroverted. This action involved a dispute over which parties owned and had the right to control the disposition of properties of the Mother African Union First Colored Methodist Protestant Church (the "Mother Church") -- the plaintiffs, who represent the Mother Church's Trustees; or the defendants, who are the Conference of African Union First Colored Methodist Protestant Church (the "Conference") and its presiding prelate, Bishop Delbert L. Jackson ("Bishop Jackson").

On April 19, 1991, this Court temporarily restrained the defendants from "interfering with the quiet title, operations, use, enjoyment, and governance of the [Mother] Church facilities located at Ninth and Franklin Streets, Wilmington,

Delaware" during the days and times of the week specified in that Order. That April 19th temporary restraining Order also directed (in Paragraph (c)) that:

> The defendant [Bishop Jackson] and his agents, employees, officers, successors, assigns, and all other acting in concert with him shall permit access for the conduct of funerals and weddings as requested by the plaintiffs.

On May 15, 1991, this Court granted the plaintiffs' motion for a preliminary injunction, and continued in effect its April 19, 1991 temporary restraining Order (including the above-quoted provision) pendente lite. (See Mother Church v. The Conference, Del. Ch., C.A. No. 12055, Jacobs, V.C. (May 15, 1991.)) Thus, from April 19, 1991 through the final determination of the merits (see Mother Church v. The Conference, Del. Ch., C.A. No. 12055, Jacobs, V.C. (April 22, 1992)), the defendants and their agents were under a Court-ordered duty to "permit access for the conduct of

funerals and weddings as requested by the plaintiffs." Until April of this year, that injunctive provision was implemented without difficulty.

When it first became necessary to schedule a funeral under that provision, plaintiff's counsel approached Ms. Shearin and asked her to contact the Reverend Thomas E. Moon ("Reverend Moon") to make the necessary funeral arrangements. Plaintiffs' counsel proceeded in that manner because Reverend Moon had been designated as Pastor of the Mother Church (over the plaintiffs' objection) by Bishop Jackson. That is, Reverend Moon was aligned with (and, thus, was believed to be a servant, employee, or agent of) defendant Bishop Jackson, for whom Ms. Shearin was counsel of record.

When plaintiff's counsel approached Ms. Shearin, she told them that she did not want to be involved, and that they should

contact Reverend Moon directly to arrange funerals. Ms. Shearin claimed that she did not represent Reverend Moon. Indeed, when plaintiffs' counsel sought to take the deposition of Reverend Moon (who is not a party to this action), Ms. Shearin informed them that she was not Reverend Moon's attorney, that she would not be representing him, and that plaintiffs' counsel would have to subpoena Reverend Moon to obtain his testimony. (4/27/92 Contempt Hrg. Tr. at 7-9.) Accordingly, between April 19, 1991, and the trial which took place in September, 1991, plaintiffs' counsel contacted Reverend Moon directly to arrange for weddings and funerals.

Based on their understanding that Ms. Shearin did not represent Reverend Moon, Mr. Neuberger, one of plaintiffs' attorneys, also communicated directly with Reverend Moon during the trial. Specifical-

ly, on September 17, 1991, Mr. Neuberger informed Reverend Moon that he (Reverend Moon) would not be called upon to testify at the trial, and was therefore free to leave the courthouse.

On September 18, 1991, Ms. Shearin wrote a letter to the Court, irately contending -- for the first time -- that she represented Reverend Moon, and that Mr. Neuberger's direct communication with Reverend Moon was therefore ethically inappropriate.[1] Ms. Shearin also wrote a letter to Disciplinary Counsel complaining of Mr. Neuberger's conduct. (4/27/92 Contempt Hrg.

[1]Ms. Shearin wrote "Mr. Neuberger's conduct was outrageous. He knows that I represent Pastor Moon, yet he presumed to give him gratuitous legal advice. . . and prevented him from entering the courtroom to consult me. . . ." (9/18/91 Letter to Court of Ms. Shearin; emphasis added.)

Tr. at 11.) That letter prompted a formal inquiry of plaintiffs' counsel, which, however, led to no further action by Disciplinary Counsel. Given Ms. Shearin's position that she represented Reverend Moon, plaintiffs' counsel quite understandably decided that any future communications with Reverend Moon would be through Ms. Shearin.

During late March of this year, it became necessary once again to schedule a funeral. Accordingly, plaintiffs' counsel asked Ms. Shearin to contact Reverend Moon and ask him to make the appropriate funeral arrangements. However, Ms. Shearin refused, on the basis that it was not her "role" to schedule funerals and that she would not assist in that effort -- i.e., would not assist her client in complying with the Court's Order -- unless the Court directed her to do so. Accordingly, on April 1, 1992, Ms. Moore, plaintiffs' other

attorney, wrote the Court a letter recounting those facts and requesting it to intervene. Because the matter concerned compliance with the Court's preliminary injunction Order, I scheduled a telephone conference with counsel on April 2, 1992.

During that conference the Court instructed Ms. Shearin in her capacity as an officer of the Court to contact her client, Reverend Moon, to convey the plaintiffs' request to schedule the funeral. Ms. Shearin refused to obey the Court's direction, even after the Court repeated it. The Court then advised counsel that it would entertain a motion to hold Ms. Shearin in contempt. The Court also advised plaintiffs' counsel that they could contact Reverend Moon directly after first informing Disciplinary Counsel of their intended course of action and the reason why direct contact with Reverend Moon was

required.

The next day, April 3, 1992, plaintiffs' counsel reported to the Court that she had contacted Disciplinary Counsel and Reverend Moon, and that Reverend Moon had duly scheduled the funeral. That same day the plaintiffs also moved to hold Ms. Shearin in contempt of court, and the court subsequently entered an Order scheduling a contempt hearing for April 27, 1992.

In response to the contempt motion, Ms. Shearin filed a document styled "Application to Withdraw Appearance" on April 6, 1992. In that document Ms. Shearin set forth several reasons why her refusal to obey the Court's verbal order to contact Reverend Moon was not a contempt of court. One of those reasons was that that verbal order was not of record.[2] Another was that

[2]The April 2, 1992 telephone conference was not transcribed by a court reporter. In

> . . . Pastor Moon is the Mother Church's agent, not the Conference's, and therefore the Court was ordering me to carry messages from my client's adversary to their own agent, a direct conflict of interest under Lawyers' Rule 1.7.

(Application to Withdraw Appearance, ¶2(b).)

In other words, Reverend Moon had now become plaintiffs' counsels' client, not hindsight, it should have been. Nor was the Court's verbal order to Ms. Shearin later reduced to writing, because at that time the Court did not fully appreciate that Ms. Shearin would contend that a court order directed to one of its attorney-officers is unenforceable if it is not of record, and because by the time the Court learned that Ms. Shearin would be taking that position, the problem giving rise to the dispute had been resolved. Thus, any recorded order would at that point have been moot.

Ms. Shearin's.

At the contempt hearing Ms. Shearin rested her defense entirely upon her contention that the Court's April 2, 1992 verbal order to her was not of record. After taking the matter under advisement, the Court, by letter dated April 30, 1992, advised counsel that, for reasons unrelated to the merits, it would decline to adjudicate Ms. Shearin in contempt of court. To be sure, Ms. Shearin's conduct as an officer of the Court was inexcusable and would have been a contempt had the Court formally made its April 2, 1992 verbal order of record. However, the sparse case authority on the subject made it not altogether clear whether that verbal order could support a contempt finding. (See 4/30/92 Letter of Court to Counsel.) The Court concluded that instead of resolving that uncertainty in the contempt context,

it would be more productive to address frontally the conduct of counsel that had caused the underlying problem to begin with, i.e., Ms. Shearin's inconsistent litigating positions concerning her legal representation of Reverend Moon. Because those positions were both subjects of a "pleading, motion [or] other paper of a party . . . signed by [an] attorney of record," that conduct implicated, and could be addressed under the rubric of, Chancery Court Rule 11.

II.

The sole issue is whether Ms. Shearin's inconsistent positions concerning her representation of Reverend Moon (as set forth in her September 18, 1991 letter to the Court, and in her April 6, 1992 Application to Withdraw Appearance) formed the basis of a Rule 11 violation. I conclude that they did.

A principal purpose of Rule 11 is to create strong incentives for an attorney or a party not to sign and file a "pleading, motion, or other paper" without first having made reasonable inquiry and being satisfied that the pleading or other document is "well grounded in fact" and "warranted by existing law" or a good faith argument for a change in the law. Rule 11 also proscribes the filing of any document of a party signed by an attorney for "any improper purpose." These objectives are implemented by the following language which forms the core of the Rule:

> The signature of an attorney or party constitutes a certificate by him that he has read the pleading, motion, or other paper; that to the best of his knowledge, information, and belief formed after reasonable inquiry it is well grounded in fact and is warranted by existing law or a good faith argument for the extension, modification, or reversal of existing law, and that it is not interposed for any improper purpose, such as to harass or to cause unnecessary delay or needless increase

> in the cost of litigation. . . . If a pleading, motion, or other paper is signed in violation of this Rule, the Court, upon motion or upon its own initiative, shall impose upon the person who signed it, a represented party, or both, an person who signed it, a represented party, or both, an appropriate sanction, which may include an order to pay to the other party . . . the amount of the reasonable expenses incurred because of the filing of the pleading, motion, or other paper, including a reasonable attorney's fee.

I conclude, specifically, that the signing and filing of the Application to Withdraw Appearance violated Rule 11 for the following reasons:

1) Ms. Shearin's positions concerning Reverend Moon, in her September 18, 1991 letter to the Court and in her application to Withdraw Appearance, are clearly inconsistent. In the former document Ms. Shearin took the position that "I represent Pastor Moon." In the latter she stated that Pastor Moon was "the Mother Church's agent," i.e., the agent of "my client's ad-

versary." That statement necessarily meant that Ms. Shearin did not (because ethically she could not) represent Reverend Moon.[3] Since they cannot be reconciled, one of those mutually contradictory positions must be unfounded.

2) The record reveals no basis to conclude that Ms. Shearin's September 18, 1991 letter to the Court was without factual or legal basis. Although Reverend Moon was a-

[3] If Ms. Shearin represented Reverend Moon as she stated in her September 18, 1991 letter to the Court, there would be no ethical prohibition against her contacting Reverend Moon to implement this Court's preliminary injunction Order. Therefore, for Ms. Shearin to claim that she could not ethically contact Reverend Moon to schedule the funeral, she necessarily must have been asserting that she did not represent Reverend Moon.

ligned with -- indeed was answerable to -- defendant Bishop Jackson, his role as Pastor included dealing with a congregation that was largely hostile to him. Accordingly, it is not implausible that Reverend Moon might have desired to retain Ms. Shearin to represent him either separately or as the defendants' agent. In any event, I am unable to conclude that Ms. Shearin's September 18, 1991 statement to the Court that she represented Reverend Moon was unfounded. I therefore will assume that that statement was true, notwithstanding the position Ms. Shearin previously took when plaintiffs' counsel sought to depose Reverend Moon.

3) However, the record does reveal that Ms. Shearin had no basis in fact or law to contend in her Application to Withdraw appearance that Reverend Moon was the plaintiffs' agent. To the contrary, the undis-

puted record shows that Reverend Moon had been thrust upon the plaintiffs as their Pastor, against their wishes, by defendant Bishop Jackson. Reverend Moon's deposition made it abundantly clear that he was in no sense an agent of the plaintiffs, and Ms. Shearin has shown no basis in fact for contending otherwise. One must infer that that statement was designed to avoid a contempt finding, by suggesting that because Ms. Shearin did not represent Reverend Moon, she could not validly be ordered to contact him.

4) Ms. Shearin has made no effort to reconcile these two conflicting positions in any intelligible way. Indeed, absent an intervening change in the lawyer-client relationship between Reverend Moon and Ms. Shearin, there is no way those opposite statements can be reconciled.[4]

- -

[4]Ms. Shearin does not even argue that any

Accordingly, insofar as the Application to Withdraw Appearance represents that Reverend Moon was the plaintiffs' agent and that Ms. Shearin was ethically prohibited from contacting him, it was not "well grounded in fact" or "warranted by existing law" within the meaning of Rule 11. In fact, Ms. Shearin was Reverend Moon's attorney and therefore she could ethically have contacted him to schedule the funeral.

Although the Court wishes it could do such change ever occurred, i.e., that she ceased to represent Reverend Moon after September 18, 1991. On the contrary, in her letter to the Court in opposition to a Rule 11 adjudication she stated "I am the Pastor's lawyer. . . ." As previously noted (see n. 3, supra), since Ms. Shearin was Reverend Moon's lawyer, there is no reason why she could not have contacted him to schedule the funeral.

otherwise, it is unable to view this conduct as merely a product of a well-intended but mistaken error of judgment. There is no claim, let alone evidence, that Ms. Shearin made an innocent error of judgment. Rather, her conduct lamentably evidences a pattern of playing "fast and loose" with opposing counsel and, in this instance, with the Court as well. Ms. Shearin conveniently and alternatively has claimed to be -- and not to be -- Reverend Moon's counsel whenever it suited her immediate litigation purpose. Consistent with that approach, she also advised plaintiffs' counsel that she would not contact Reverend Moon unless the Court ordered her to do so, but when the Court did, she then refused to obey the Court's verbal order. That conduct created needless delay in implementing the Court's preliminary injunction provision regarding the sche-

duling of funerals, and it served only to harass the plaintiffs. Such behavior is capricious and unacceptable, and is wholly inconsistent with the high standards of conduct expected of officers of this Court.

For these reasons the Court further concludes (again, reluctantly) that the Application to Withdraw Appearance also violated Rule 11 because it was filed for an "improper purpose," namely, to harass and vex the opposing parties.

Given the nature of the Rule 11 violation, the Court imposes the following sanctions:

1) Ms. Shearin shall pay plaintiffs the reasonable attorneys' fees incurred by plaintiffs by reason of her Application to Withdraw Appearance; and

2) a copy of this Opinion shall be forwarded to Disciplinary Counsel of the Board of Professional Responsibility for such in-

vestigation and further proceedings as Disciplinary Counsel deems warranted. See Rules 3.3(a)(1) and 3.4(c) of the Delaware Lawyers' Rules of Professional Conduct.

IT IS SO ORDERED.

/s/ Jack B. Jacobs
Vice Chancellor

IN THE COURT OF CHANCERY OF THE STATE
OF DELAWARE IN AND FOR NEW CASTLE COUNTY

MOTHER AFRICAN UNION FIRST COLORED
METHODIST PROTESTANT CHURCH, et al.
Plaintiffs,

v.

THE CONFERENCE OF AFRICAN UNION FIRST
COLORED METHODIST PROTESTANT
CHURCH, et al.,
Defendants.

C. A. No. 12055
Entered: 22 April 1992

Jacobs, Vice Chancellor

MEMORANDUM OPINION

This is an action for declaratory and injunctive relief, which the plaintiffs filed on April 18, 1991, to establish their ownership rights in certain church properties. The plaintiffs are Mother African Union First Colored Methodist Protestant Church (the "Mother Church"), a church incorporated in Delaware, and two of the Mother Church's Trustees, who sue individually and on behalf of a class of other

persons similarly situated. The defendants are The Conference of African Union First Colored Methodist Protestant Church, a Delaware corporation (the "Conference"), and its Bishop, Delbert L. Jackson ("Bishop Jackson").

On April 19, 1991, the Court entered a temporary restraining order prohibiting the defendants from "interfering with the quiet title, operation, use, enjoyment and governance of The [Mother] Church facilities located at Ninth and Franklin Streets, Wilmington, Delaware" during the days and times specified in that Order. One month later the Court granted the plaintiffs' motion for preliminary injunctive relief, and continued the temporary restraining order in effect until further order of the Court. See Mother Church v. The Conference, Del. Ch., C.A.No. 12055, Jacobs, V.C., Mem.Op. [A024] (May 15, 1991). On September 16

and 17, 1991, a two-day trial on the merits took place, after which the parties submitted post-trial briefs. This is the decision of the Court on the merits after trial.

I.

The facts underlying the present dispute are narrated in detail in the Court's May 15, 1991 preliminary injunction Opinion. See id. [A083-89]. To avoid needless repetition, that May 15, 1991 Opinion is made an Appendix to, and incorporated by reference in, this Opinion. Having considered the trial testimony and the submissions of counsel, I find nothing that warrants altering the factual findings of the May 15, 1991 Opinion in any respect. Accordingly, the facts as preliminarily found in that Opinion are finally found to be the facts upon which this Court's final judgment rests. The Court

thus finally determines that (i) the power to control the disposition of the Mother Church's physical properties is vested solely in the Mother Church's Trustees and its membership, subject to the Mother Church's Articles of Association and by-laws, (ii) that power has not been ceded to, or in any way superseded or supplanted by, the Conference or Bishop Jackson, and (iii) none of the properties of the Mother Church have been validly disposed of, or in any form conveyed to, the Conference.

Unfortunately, that determination does not dispose of all issues in this case. Left undecided in the Court's previous Opinion were "the identity of the lawful Trustees and congregation, and whether the Mother Church has lawfully disaffiliated from the Conference." Id. [A097]. Those questions implicate the further question of whether the Conference has any power to

influence the "manner and disposition of the Mother Church's properties." Id. [A-097]. The defendants argue that even if the power to control the Mother Church's properties and other activities is found to reside in the Trustees, the defendants are still entitled to judgment because the plaintiffs (and the other Trustees) are no longer the Mother Church's lawful Trustees. Rather (the defendants argue), the lawful Trustees are the persons that Bishop Jackson and the Conference have selected to occupy those positions. Because the plaintiffs hotly dispute that claim, the Court addresses those issues in Part II, infra, of this Opinion.

The plaintiffs contend that they are also entitled (i) to have this action certified as a class action, (ii) to a determination that the defendants are in contempt of court, and (iii) to an order di-

recting the defendants to pay the plaintiffs' attorneys' fees and costs. The Court considers those matters in Part III, IV, and V, respectively, of this Opinion.

Finally, the defendants advance several counterclaims and procedural issues, and in that connection they contend that they are entitled to have this action certified as a defendant class action. The Court addresses those matters in Part VI of this Opinion.

II.

To determine who are the Mother Church's lawful Trustees and members, some legal background is helpful. In Jones v. Wolf, 443 U.S. 595 (1979), the United States Supreme Court gave state courts a choice between (at least) two methods of resolving church property disputes that do not require those court to adjudicate religious controversies. First, if the

church is "hierarchical" in nature, a state court may defer the resolution of the controversy to an authoritative tribunal established by the church. Alternatively, whether or not the church is hierarchical, a state court may resolve the property dispute on the basis of "neutral principles of law." Id. at 597, 602-10. Both approaches are consistent with the Religion Clauses of the First Amendment to the United States Constitution. Id.

In its preliminary injunction Opinion, this Court chose to follow the "neutral principles of law" approach.[1] In so doing

[1] That choice was ultimately vindicated by the evidence, as nothing in the trial record (other than the uncorroborated testimony of Bishop Jackson, which I find to be self-serving and not credible) supports the defendants' position that the religious denomination of which the Mother Church is

the Court considered the certificates of incorporation of the Mother Church and the Conference, deeds to the church properties, and the Historical Preface of the 1990 Book of Discipline.[2] See Mother a part, is hierarchical. Thus, there is no "authoritative tribunal of the hierarchical church" to which this Court could defer the resolution of this dispute. Jones v. Wolf, supra. Moreover, the adjudication of this property dispute does not require the resolution of any controversy concerning religion.

[2]The full title of that document is The Book of Discipline of The African Union First Colored Methodist Protestant Church and Connection in the United States of America and The World. Although that entire document was placed on record for the purposes of the preliminary injunction motion, it was not made a part of the trial record

Church v. The Conference, supra, [A082-88, A092-97]. On the basis of that record, the Court concluded (preliminarily) that there was no evidence that the Conference is legally entitled to supplant the power of the Mother Church's Trustees and

(except for the Historical Preface). The defendants, nonetheless, cited portions of that document (other than its Historical Preface) at numerous points in their Answering Trial Brief. The Court does not view the absence of this document from the trial record as significant, because it considered the Book of Discipline in depth at the preliminary injunction state and found nothing therein which entitles the Conference to supplant the power of the Mother Church's Trustees and membership to control and dispose of that Church' physical properties. See Mother Church v. The Conference, supra, at [A087-88].

membership to control the disposition of that Church's physical properties. See id. [A087-88]. As earlier noted, the defendants have shown no reason for the Court to alter its conclusion.[3]

As also noted, however, certain questions were left open, including "the iden-

[3]The defendants were afforded the opportunity to present evidence at trial in support of their contentions that "(1) the Mother Church had always held the properties in trust for the Conference, and (2) representatives of the Conference possessed the requisite authority to transfer the properties on behalf of the Trustees." Mother Church v. The Conference, supra, [A093]. But, the defendants provided no evidence that persuades the Court to alter its preliminary conclusion that neither of these contentions has merit. See id. [A-093-97].

tity of the lawful Trustees and congregation, and whether the Mother Church has lawfully disaffiliated from the Conference." Id. [A097]; see also id. [A090] & n. 9. These questions raise the issue of whether (as the defendants argue) the Conference is empowered to appoint the Mother Church's lawful Trustees and to determine who are its lawful members. The defendants claim to have that power, but they adduced no credible evidence at the trial to support that claim. I therefore conclude that the named plaintiffs (and other Trustees and members of the Mother Church) re- main as lawful Trustees and members of the Mother Church. I further conclude, for the reasons which follow, that the persons found to be the lawful Trustees and members of the Mother Church have validly disaffiliated themselves and the Mother Church from the Conference.

The plaintiffs suggest that the Court may resolve the disaffiliation issue by reference to Delaware corporation law. (See Pl. Trial Br. at 27-34; Pl. Rep. Post-Trial Br. at 10.) Specifically, the plaintiffs cite 8 Del. C. §215(c), which provides that:

> Unless otherwise provided in this chapter, the certificate of incorporation or bylaws of a nonstock corporation may specify the number of members having voting power who shall be present or represented by proxy at any meeting in order to constitute a quorum for, and the votes that shall be necessary for, the transaction of any business. In the absence of such specification in the certificate of incorporation or bylaws of a nonstock corporation, one-third of the members of such corporation shall constitute a quorum at a meeting of such members, and the affirmative vote of a majority of such members present in person or represented by proxy at the meeting and entitled to vote on the subject matter shall be the act of the members, unless the vote of a greater number is required by this chapter, the certificate of incorporation or bylaws.

Id.

Neither the Mother Church's Articles of

Association (i.e., its certificate of incorporation) nor its bylaws prescribes general quorum standards for action by Church members (as opposed to quorum standards for certain specified actions, such as alienation of Church property). Therefore, the plaintiffs argue that by virtue of §215(c), the vote to disaffiliate was valid, since 82 of 229 members, representing 35.8% of the membership (i.e., greater than one-third), were present at the meeting called to vote on that issue; and 68 of those present, representing 82.9% of those in attendance (i.e., greater than a majority), voted to disaffiliate. (Trial Trans. at 254.) The plaintiffs also argue that a majority of the Mother Church's members subsequently ratified the earlier vote to disaffiliate. (See Pl. Exh. 2.)

Assuming (without deciding) that a membership vote was required in order to dis-

affiliate the Mother Church from the Conference,[4] the plaintiffs have established that the membership vote here met the requirements of §215(c) and therefore was valid. In addition, a majority of the

[4]The parties join issue on whether the requisite membership vote to disaffiliate was obtained, and thereby at least tacitly suggest that a membership vote was required. However, as the ensuing discussion of Article 6th of the Mother Church's Articles of Association demonstrates, it is not entirely clear that a membership vote was needed to disaffiliate the Mother Church from the Conference. That Article indicates that a Trustee vote to disaffiliate may have been all that was required. The Court need not resolve this issue, though, because even if a membership vote was required, the membership vote obtained here was legally sufficient.

Mother Church's total membership later ratified the membership vote to disaffiliate (although it is not clear whether that was accomplished at a formal meeting called for that purpose). The defendants' only direct response to this analysis is to assert that "82 members was not a quorum, being fewer than half the members." (Def. Ans. Trial Br. at 13.) Again, the defendants provide no support for that contention, which contradicts the express language of §215(c).

The defendants next assert that those members of the Mother Church who voted to disaffiliate are no longer lawful members (or, where applicable, Trustees). The defendants rest that position on their interpretation of Article 6th of the Mother Church's Articles of Association which (they say) provides that "if some members refused to continue following the bylaws and regulations, but any members main-

tained those rules, then the dissidents would cease to be members, and the faithful minority would constitute the membership." (Id. at 13, 19.) From this the defendants conclude that those members who voted for disaffiliation "were no longer members," and that those members who voted against disaffiliation "were the Mother Church congregation then, and they were the ones who elected the new trustees whose names Pastor Moon submitted." (Id. at 13.) That argument is entirely meritless.

First, the defendants cite no credible evidence, nor can the Court locate any, that supports a finding that any valid election of new Mother Church Trustees ever occurred. See Mother Church v. The Conference, supra, [A089] & n. 7. On that basis alone, it must be concluded that the lawful Trustees of the Mother Church are the named plaintiffs and the other Trustees

listed in Plaintiffs' Exhibit 1.

Second, any effort by the defendants' to depose the plaintiffs as Trustees was legally ineffective, because Article 6th of the Mother Church's Articles of Association does not support the defendants' argument that the Mother Church's members and Trustees are no longer its lawful members and Trustees. Article 6th pertinently states that:

> . . . if it happens that the Members [of the Mother Church] shall become divided in opinion and a majority of them shall be unwilling to be governed by the Rules and principles that this Church is founded on, such of them so swerving from the true principles thereof shall be no longer Members of said [Mother Church], and if there should happen to be no more . . . [illegible] . . . of the Members of this Corporation than one maintaining the Rules that one shall hold the right and prerogative of the said Church. And that the By-Laws and regulations which shall be made by the Trustees from time to time together with these Articles of Association shall be deemed & taken to be; and shall be the true foundation of said Church, and the foundation on which the said Corporation shall exist.

(Pl. Exh. 3.)[5] The defendants interpret Article 6th to mean that those members who voted against disaffiliating from the Conference are now the only "true" members of the Mother Church. They reason as follows: First, Article 6th provides that the "true foundation of the church shall be the "By-Laws and regulations made by the Trustees . . . together with these Articles of Association." Second, the "bylaws" being referred to in article 6th are the by-laws of the Conference, i.e., the Book of Disci-

[5]The quoted portion of Article 6th differs from that which appears in the transcribed version introduced as Plaintiffs' Exhibit 3. A review of the original handwritten Articles of Association (on microfilm) reveals that errors in transcription, including the omission of several words, found their way into that particular trial exhibit.

pline. Third, those members who voted to disaffiliate from the Conference were of necessity (and in the language of Article 6th) "unwilling to be governed by the Rules and principles that this Church is founded on." Therefore, they "shall be no longer Members of said [Mother Church]," leaving only those members who voted against disaffiliation as the lawful members of the Mother Church.

That argument fails of its own weight, because the reference in Article 6th to "bylaws" can only be to the bylaws of the Mother Church itself, not those of the Conference. That must be so, since the Conference did not even exist at the time the Mother Church adopted its Articles of Association, including Article 6th. See Mother Church v. The Conference, supra, [A095] & n. 13.

Moreover, Article 6th affirmatively

established the legitimacy of the plaintiffs' position, not the defendants' position. That Article evidences that the founders of the Mother Church foresaw the possibility of a schism within the Church, and the problems a schism would create in both the temporal and spiritual realms if more than one group claimed to be the "true" Church. The final sentence of Article 6th shows that were such a division to occur, the bylaws and regulations adopted by the Mother Church's Trustees (along with the Articles of Association) would be the "true foundation" of both the Church and the corporation, i.e., would govern the resolution of that controversy. The Court has already concluded that the plaintiffs and other persons listed in Plaintiffs' Exhibit 1 are the lawful Trustees of the Mother Church. Because those Trustees voted unanimously to disaffiliate from the

Conference (Pl. Exh. 1), that act of disaffiliation was legally valid and effective by virtue of Article 6th. Moreover, because the defendants' "membership-identity" argument is without merit, it follows that the members of the Mother Church (at least as of the time they voted to disaffiliate) are (or were) the 229 persons listed in Plaintiffs' Exhibit 20, as I have already concluded above.

To summarize: the Mother Church, its Trustees, and its members (all of whom lawfully retain their positions) have the exclusive power (subject to the Mother Church's Articles of Association and bylaws) to control and dispose of the Church properties. They have not transferred those properties to the Conference or any one else. The Trustees (and, to the extent necessary, the members) have validly voted to disaffiliate the Mother Church from the

Conference. Finally, the defendants have shown no basis to alter the findings in this Court's May 15, 1991 Opinion that "(a) the Mother Church owns the properties at issue, and (b) the April 6, 1991 deed purporting to transfer those properties to the Conference was void ab initio." Mother Church v. The Conference, supra, [A093].

III.

The plaintiffs seek to have this action certified as a class action pursuant to Chancery Court Rule 23. The class is said to consist of the 229 persons who were members of the Mother Church immediately before the vote to disaffiliate. (See Pl. Exh. 20.) The apparent reason for seeking class certification is so that the Court's merits determination will bind all members of the Mother Church, including those who voted against disaffiliating from the Conference. That, in turn, would obviate pos-

sible future challenges to (and potentially inconsistent determinations regarding) the Mother Church's ownership of the properties in question. For the reasons which follow, the plaintiffs are entitled to have this action certified as a class action.

To maintain a class action under Rule 23, the plaintiffs must establish all four prerequisites of Rule 23(a) and at least one of the three requirements of Rule 23 (b). The four prerequisites of Rule 23(a) require the plaintiffs to demonstrate that:

> . . . (1) the class is so numerous that joinder of all members is impracticable, 2) there are questions of law or fact common to the class, (3) the claims or defenses of the representative parties are typical of the claims or defenses of the class, and (4) the representative parties will fairly and adequately protect the interests of the class.

The proposed class here easily meets those requirements. First, joinder of all members is impracticable because the proposed class would consist of 229 persons.

Coca-Cola Bottling Co. of Elizabethtown, Inc. v. Coca-Cola Co., D.Del., 95 F.R.D. 168, 174 (1982);[6] Weiner & Assoc. v. Krapf, Del.Supr., 584 A.2d 1220, 1225 (1991). Second, there are questions of law and fact (including who are the Mother Church's lawful Trustees and members) that are common to the class. Id. Third, the plaintiffs' claims are typical of those of the class, since they arise from the same events and are based on the same legal theories. Id. Fourth, the plaintiffs are adequate class representatives, since their interests are

[6]Chancery Court Rule 23 is substantially similar to Rule 23 of the Federal Rules of Civil Procedure, and accordingly federal court interpretations of that rule are persuasive authority. Nottingham Partners v. Dana, Del.Supr., 564 A.2d 1089, 1094 (1989); Hoffman v. Cohen, Del.Supr., 538 A.2d 1096, 1097-98 (1988).

not antagonistic to -- indeed, they are aligned with -- the interests of the class.[7] Id. at 1225-26. Adequacy of representation is also sometimes determined by reference to the plaintiffs' counsel. Ortiz v. Eichler, D.Del., 616 F. Supp. 1046, 1058 (1985). In this case the plaintiffs' counsel are highly qualified and experienced, and have ably conducted this litigation.

The plaintiffs have also satisfied two

[7]The defendants assert that "the named plaintiffs have shown such a profound lack of understanding of the issues that they are not qualified to represent the class members' interests adequately." (Def. Ans. Trial Br. at 22.) I conclude otherwise. The defendants provide no support for that argument, and the plaintiffs' trial testimony demonstrates that the named plaintiffs have a fully-informed understanding of the nature of this case.

of the requirements of Rule 23(b). First, to permit members of the proposed class to prosecute separate actions might create inconsistent results that would establish incompatible standards of conduct for the parties opposing the class (i.e., the Conference and Bishop Jackson), and that could impair the ability of other class members to protect their interests in the Mother Church. Manifestly, if those Mother Church members who voted against disaffiliation were allowed to prosecute separate actions, that would create a potential risk of adjudications inconsistent with that being rendered here. See Rule 23(b)(1); Weiner & Assoc., 584 A.2d at 1226. Second, final injunctive relief prohibiting the defendants from interfering with the plaintiffs' title in and enjoyment of the properties in question is necessary and appropriate in these circumstances. See Rule 23(b)(2);

Weiner & Assoc., 584 A.2d at 1226-27; Nottingham Partners v. Dana, Del.Supr., 564 A.2d 1089, 1095 (1989).

The defendants oppose class certification on the ground that the plaintiffs lack standing to bring this action. (See Def. Ans. Trial Br. at 14-15, 22-23.) But the defendants' argument rests on their position concerning who constitutes the Mother Church's lawful Trustees and members -- a position that the Court has already rejected. Since the plaintiffs have already been found to be members of the Mother Church, they have standing to bring this suit in that capacity as a matter of law. Kedroff v. St. Nicholas Cathedral of Russian Orthodox Church in North America, 344 U.S. 94, 113 (1952); Watson v. Jones, 80 U.S. 679, 714 (1872).[8]

[8]The defendants also argue that the Mother Church was prohibited by its governing doc-

For all of these reasons, this action will be certified as a class action.[9]

IV.

The plaintiffs next request this Court - - -

to adjudicate that the defendants and their counsel are in civil contempt of Orders of this Court for three separate activities: (A) filing and prosecuting a lawsuit in the United States District Court for the District of Delaware against the Mother Church's Trustees in the name of St. Paul's African Union First Colored Methodist Protestant Church of Washington, D.C. ("St. Paul's Church"); (B) improperly using the Mother Church facility during a time that other members were entitled to use that facility in accordance with this Court's temporary restraining order; and (C) publishing defamatory material that had been placed under seal by order of this Court. By way of sanctions, the plaintiffs urge that the defendants be fined and ordered to pay the plaintiffs' past and future legal costs, at least for defending the District Court litigation described below.

For the reasons which follow , I find that the conduct of defendants and their counsel, while in many respects bizarre, does not amount to civil contempt.

The purpose of a civil contempt determination is to coerce obedience to a court's order. Thus, a civil contempt sanction is coercive or remedial in nature, as distinguished from punitive, which is the nature of criminal contempt.[10] Delaware State Bar Ass'n v. Alexander, Del. Supr., 386 A.2d 652, 665 (1978); State v. Mancari, Del.Supr., 223 A.2d 81, 82 (1966) (In a civil contempt proceeding, the "keys to the jail are in defendant's hands."). Thus, for the plaintiffs to establish a civil contempt, they must show that the defendants violated an order of this Court, and that the sanction they seek is coercive

[10]The plaintiffs here do not seek a criminal contempt determination.

or remedial in nature.

The sanctions that the plaintiffs seek in connection with items (B) and (C), supra, fail to meet those requirements. In both instances the plaintiffs would have the defendants fined and ordered to pay the plaintiffs' legal costs. In these circumstances those sanctions necessarily are punitive, because they are designed to punish disobedience of this Court's order. They cannot be remedial or coercive, since the complained-of acts are now accomplished and cannot be undone or otherwise remedied by any sanction that this Court might impose. Delaware State Bar Ass'n, 386 A.2d at 665.

Moreover, the complained-of acts labeled as (A) and (C) did not violate a preexisting order of this Court. On June 17, 1991, the defendants filed an application to certify an interlocutory appeal from this Court's Order granting a preliminary

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IN THE SUPREME COURT OF THE UNITED STATES

OCTOBER TERM, 1992

THE CONFERENCE OF AFRICAN UNION FIRST COLORED METHODIST PROTESTANT CHURCH and DELBERT L. JACKSON,

Petitioners,

v.

MOTHER AFRICAN UNION FIRST COLORED METHODIST PROTESTANT CHURCH, MORRIS A. COMEGYS, and SARA B. GARDNER,

Respondents.

ON PETITION FOR WRIT OF CERTIORARI TO THE SUPREME COURT OF THE STATE OF DELAWARE

APPENDIX TO PETITION

Volume II: Pages A061 - A119

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Counsel for Petitioners

60 pp

injunction (item (C), supra). That certification application contained material that was scandalous, irrelevant, and not supported by any record evidence. (See Pl. Exh. 28, ¶5.) Nevertheless, shortly before or at the time the defendants filed the certification application, their counsel distributed copies of it to the press. (Pl. Exh. 29, Trans. at 24.) The Court (by then alerted to the problem) ordered the defendants' application to be sealed, but that order was not entered until June 19, 1991. By that point the harm had already been done. (Pl. Exh. 29, Trans. at 13-14.) Because the actions of defendants' counsel all occurred before June 19, they did not violate an existing order of this Court.[11]

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[11]Moreover, the June 19th order only directed that one document -- the certification application -- be sealed. The defendants

Also claimed to constitute contempt is later filed other, different documents with both the Delaware and United States Supreme Courts that contained the same impertinent allegations (see Pl. Exhs. 30, 31), and the defendants' counsel publicly distributed copies of those documents. Although that conduct was not in keeping with the standards expected of counsel who practice before this Court, it did not violate this Court's June 19, 1991 Order. Ultimately, this Court was asked to, and did, order the defendants' counsel not to distribute further any copies of her petition for certiorari to the United State Supreme Court. Counsel appears to have complied with that order.

Although the defendants did not technically violate any order of this Court, their counsel has displayed, in the complained-of acts and in her conduct through-

the filing and prosecution of the District out this litigation, a disturbing propensity to become personally identified with and involved in her clients' cause, and litigation-related activities. Counsel appears, perhaps serendipitously, to have steered her clients through narrow loopholes in this Court's orders, or to have taken advantage of small windows of time before orders prohibiting the challenged conduct would be entered. She has also come perilously close to being a witness in this case, by becoming personally involved in (in some cases, an instigator of) certain of the activities of which the plaintiffs complain. While vigorous advocacy by an attorney is to be expected, the attorney must take care not to cross the line between being an advocate for, and a personal participant in, a client's cause. When that line is crossed and the "attor-

Court action by St. Paul's Church (item (A), supra). Because that matter is somewhat more complex, some background is again helpful. on April 19, 1991, this Court entered its temporary restraining order which pertinently directed that:

> The defendant, and his agents, employees, officers, successors, assigns, and all others acting in concert with him are hereby enjoined and restrained from interfering with the quiet title, use, enjoyment and governance of The Church facility located at Ninth and Franklin Streets, Wilmington, Delaware, by the duly elected trustees of the [Mother Church] or by its members during the following times . . . .

(Pl. Exh. 32.) The plaintiffs then prosecuted their motion for a preliminary in-

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ney" and "client" roles are blurred so as to become indistinguishable, it becomes difficult for the attorney to discharge properly the duties that flow from the other roles the attorney must occupy, namely, that of objective advisor to her client and officer of the Court.

junction, which was argued on May 6, 1991, and was decided in the plaintiffs' favor on May 15, 1991.

On May 8, 1991 (two days after oral argument before this Court on the preliminary injunction motion), St. Paul's Church filed an action in the United States District Court for the District of Delaware (the "District Court action"). St. Paul's Church is a Washington, D.C. church that is a member of the Conference. In the District Court action, St. Paul's Church sought to enjoin the Trustees (two of whom are plaintiffs in this action) from interfering with St. Paul's Church's title to the properties of the Mother Church in this case. Although the essential predicate of the District Court complaint was that St. Paul's Church had some independent "title" to or other cognizable interest in the Mother Church's properties, in fact that

was not the case. And while the defendants deny that St. Paul's Church was acting as their agent in filing the District Court action, the record clearly shows otherwise.[12] In reality the District Court ac-

[12]The record establishes that St. Paul's Church, acting through its pastor, the Rev. Jonah Lindsay, was the defendants' agent in bringing the District Court action. Rev. Lindsay signed the complaint in the District Court lawsuit. (Pl. Exh. 21.) Bishop Jackson has admitted that Rev. Lindsay is a Conference official. (Pl. Exh. 12, Jackson Dep. at 156-57.) Moreover, the record also reveals a pattern of activity in which Bishop Jackson and Rev. Lindsay worked together in the power struggle against the Mother Church's Trustees which culminated in the litigation of this Court. (See id.; Pl. Exh. 19; Pl. Exh. 18, ¶5; Pl. Exh. 16, Moon Dep. at

tion was a thinly disguised effort by the
15-16.) Rev. Lindsay even had Bishop Jackson's (and the Conference's) counsel bring the District Court lawsuit. (Pl. Exhs. 21-23.) Finally, the defendants have not shown (or even articulated) what independent legal interest a church located in Washington, D.C., would further by seeking to interfere in the affairs of an independent church located in Wilmington, Delaware. Indeed, any standing of St. Paul's Church to assert an interest in properties of the Mother Church could only have been as an agent of the Conference (or Bishop Jackson). As the defendants acknowledge, "St. Paul['s Church] has the same relationship to the Bishop the Mother Church has." (Def. Ans. Trial Br. at 23.) That is, the only connection existing between St. Paul's Church and the Mother Church is through the Conference of which both chur-

defendants to remove to a federal forum a controversy that had previously been argued and made sub judice before this Court, in order to derail a preliminary injunction that the defendants apparently (and correctly) anticipated.

The District Court complaint alleged that this Court's temporary restraining order violated the Federal Civil Rights Act and the United States Constitution. That complaint, however, was based upon the identical facts and merits theory that the defendants were simultaneously presenting to this Court. Concurrently with the filing of the District Court action, St. Paul's Church moved for a federal court order temporarily restraining the Mother

- -

ches were members. Therefore, the only interest that St. Paul's Church could claim in the Mother Church would be by virtue of its membership in the Conference.

Church Trustees from (among other things) continuing to prosecute this (Chancery) action. That motion was heard on May 10, 1991, five days before this Court handed down its preliminary injunction opinion. In an oral ruling, then-District (now Third Circuit) Judge Jane R. Roth denied the motion, and in setting forth her reasons, stated:

> I am also concerned by the equities of the situation in that, as Ms. Shearin has described, the role of St. Paul's Church in the Conference, and as I reviewed the language of the temporary restraining order issued by the Court of Chancery, I would find that it would seem very likely that St. Paul's Church would fall into the category of all others acting in concert with Bishop Jackson. Therefore, I think there is a strong argument to be made that the plaintiffs here are in contempt of Chancery. That, in the area of equities, would also be a persuasive factor in not issuing the temporary restraining order out of this court.

(Pl. Exh. 22 at 31-32.)

Judge Roth then admonished counsel that before proceeding further she (Ms.Shearin) should consider very carefully whether

this Court's restraining order applied to St. Paul's Church in the District Court action as it did to the defendants in this Chancery action. Judge Roth repeated that admonition in her order of the same date:

> The Court admonishes plaintiff to carefully consider whether it is covered by the temporary restraining order issued by the Court of Chancery of the State of Delaware on April 19, 1991 in Morris A. Comegys, et al. v. Delbert L. Jackson, C.A.No. 12055 (Del.Ch. 1991), which binds Defendant Delbert L. Jackson "and his agents, employees, officers, successors, assigns, and all others acting in concert with him." The Court will closely review this matter both on the issue of whether abstention is appropriate under Younger v. Harris, 401 U.S. 37 (1971) and Pennzoil Co. v. Texaco, Inc., 481 U.S. 1 (1987), and on the question of whether Rule 11 sanctions may be appropriate as suggested by defendants.

(Pl. Exh. 23, ¶2.)

Despite those admonitions, the plaintiff in the District Court action (which was acting as a proxy for and on behalf of the defendants in this action) continued to prosecute that lawsuit. Thereafter, Judge

Roth's successor, District Judge Sue L. Robinson, dismissed the District Court action on the ground of abstention, noting that although St. Paul's Church had been ordered to review the application of the abstention doctrine to that case, it "has failed to address the doctrine as well as any procedural bars preventing state review of alleged constitutional violations." St. Paul's Church v. Comegys, D.Del., C.A.No. 91-72-SLR, Robinson, J., Mem.Op. at 5 (Mar. 24, 1992).

Undoubtedly spurred by the admonitions in Judge Roth's May 10, 1991 Opinion and Order, the plaintiffs now ask this Court to determine that the defendants' prosecution of the District Court action was a contempt of this Court's April 19th Order prohibiting them (or their agents) from "interfering with the quiet title, use, enjoyment and governance of The Church facil-

ity." (Pl. Exh. 32.) There is no question that by seeking to relitigate in a federal forum claims that should have been raised and prosecuted in this forum, the defendants were attempting an "end run" around this Court's April 19, 1991 temporary restraining order. It is also clear that from the start the effort was a misadventure that gained the defendants nothing (except added expense) and did little to enhance their counsel's professional stature. Given the District Court action's transparent purpose, the defendants' conduct was less than commendable. However, having considered the defendants' conduct in light of the strict requirements for civil contempt, I am constrained to conclude that it did not violate any clear directive of this Court's April 19, 1991 Order. Therefore, that conduct, while creating cause for concern for other reasons

(see n. 11, supra), did not amount to civil contempt.

A cardinal requirement for any adjudication of contempt is that the order allegedly violated give clear notice of the conduct being proscribed. Dover Veterans Council, Inc. v. City of Dover, N.H.Supr., 407 A.2d 1195, 1196 (1979) ("It is a prerequisite to the exercise of the civil contempt power that the underlying order clearly describe what the alleged contemnor must do to avoid the sanction."); Mattingly v. Houston, Md. Ct. App., 250 A.2d 633, 635 (1969) ("Before a person may be held in contempt for violation of an order or decree it must be definite, certain and specific in its terms."); State v. Pownal Tanning Co., Vt.Supr., 459 A.2d 989, 991 (1983) ("We agree that as a general rule before a person may be held in contempt for violating a court order, the order should

inform him in definite terms as to the duties imposed upon him. The order must be specific and definite so that it leaves no doubt as to its meaning.").

This Court's April 19, 1991 Order proscribed certain conduct. However, the filing of an action in another court was not included. Had the possibility of that kind of collateral attack been suggested at the time the April 19th Order was entered, the Court would certainly have prohibited such conduct, at least insofar as it was calculated to interfere with the Court's legitimate jurisdiction over this controversy. However, as entered, the temporary restraining order did not expressly forbid the filing of any lawsuits in another court, and cannot fairly or objectively be read to have done so by implication.

For the above reasons, none of the three complained-of acts rises to the lev-

el of a contempt of any order entered by this Court.

V.

The plaintiffs also seek an order directing the defendants to pay their legal fees. The apparent basis for that claim is that the same conduct by the defendants that the plaintiffs argue amounted to contempt (see Part IV, supra) also constituted bad faith.

This Court has the power to award legal fees incurred by a party by reason of bad faith acts by the opposing party in the course of litigation. Tandycrafts, Inc. v. Initio Partners, Del.Supr., 562 A.2d 1162, 1164 (1989); Weinberger v. UOP, Inc., Del. Ch., 517 A.2d 653, 656 (1986). While the complained-of conduct was a product of defense counsel's flawed perception of her professional role and of what constituted appropriate litigation strategy, I cannot

conclude, based on the evidence presented, that those tactics amounted to "bad faith" as would justify shifting the plaintiffs' legal fees to the defendants.[13] The defendants' tactics were, it appears, employed to further their (incorrect) perception that they had a legitimate interest in the properties at issue. The Court is aware that defense counsel's tactics forced plaintiffs' counsel to expend additional legal time and work that would otherwise have been unnecessary. Those additional efforts will be taken fully into account in any fee

[13]The Court does not purport to opine as to whether bringing the District Court action violated Rule 11 of the Federal Rules of Civil Procedure. That issue was apparently raised (or at least suggested) by the plaintiffs in their capacity as defendants in the District Court action, and was an issue to be decided by the District Court.

application presented to this Court by plaintiffs' counsel at the conclusion of this case.

VI.

Lastly, the defendants advance several counterclaims and procedural arguments. They contend that: (i) the Conference is entitled to an accounting, money damages, and attorney's fees from the Mother Church's Trustees; (ii) Bishop Jackson is entitled to money damages; (iii) because the Court has certified a plaintiff class, it should also certify the class as counterclaim defendants so that the defendants can recover damages on a class-wide basis; (iv) the Court should not have granted the preliminary injunction, and would not have done so had a portion of the record not inadvertently failed to reach the Court; and (v) the Conference's business records should have been admitted into evidence at

trial.

The defendants' counterclaims are based on the defendants' position that the Mother Church's Trustees and members are not the lawful Trustees and members (see Def. Ans. Trial Br. at 25-26), which position the Court has rejected. Because those counterclaims are meritless, so too is the defendants' request for certification of a class of counterclaim defendants. The defendants' remaining contentions amount to rearargument. In addition to lacking merit, those contentions come far too late.

* * *

For the above reasons, I find that the properties in question belong to the Mother Church, whose Trustees and members have the exclusive power to dispose of them and to govern the affairs of the Mother Church as set forth in its Articles of Association. The lawful congregation of the Mother

Church (as of the time of the vote to disaffiliate) consisted of the 229 individuals listed in Plaintiffs' Exhibit 20. The lawful Trustees of the Mother Church are the named plaintiffs and the other individuals listed in Plaintiffs' Exhibit 1, all of whom validly voted to disaffiliate the Mother Church from the Conference. To the extent that a membership vote was necessary, the requisite number of members also validly voted to disaffiliate the Mother Church from the Conference. Counsel shall submit a form of order consistent with this Opinion.

Civil Action No. 12055

IN THE COURT OF CHANCERY OF THE STATE OF DELAWARE IN AND FOR NEW CASTLE COUNTY

MOTHER AFRICAN UNION FIRST COLORED METHODIST PROTESTANT CHURCH,
a Delaware Corporation,
MORRIS A. COMEGYS and SARA B. GARDNER,
individually and on behalf of all others similarly situated,
Plaintiffs,

v.

THE CONFERENCE OF AFRICAN UNION FIRST COLORED METHODIST PROTESTANT CHURCH,
a Delaware corporation,
and DELBERT L. JACKSON,
Defendants.

MEMORANDUM OPINION

Date Submitted: May 7, 1991
Date Decided: May 15, 1991

Paulette S. Moore, Esquire, of DOROSHOW, PASQUALE & LiNARDUCCI, Wilmington, Delaware; Thomas S. Neuberger, Esquire, Wilmington, Delaware; Attorneys for Plaintiffs.

K. Kay Shearin, Esquire, Wilmington, Delaware; Attorney for Defendants.

JACOBS, Vice Chancellor

At issue on this motion for a preliminary injunction are the ownership rights to a church building and other properties that until recently were titled in the name of Mother African Union First Colored Methodist Protestant Church ("Mother Church"), a Delaware corporation. The competing claimants to those properties are the Mother Church and its Trustees, who are the plaintiffs; and The Conference of African Union First Colored Methodist Protestant Church (the "Conference"), a Delaware corporation, and its Bishop, Delbert L. Jackson ("Bishop Jackson"), who are the defendants.[1]

Plaintiffs filed this lawsuit on April 18, 1991 to remedy certain actions taken by or at the direction of Bishop Jackson. On April 9, 1991, a majority of those persons present at a special congregational meeting voted to disaffiliate the Mother Church from the Conference.[2] The complaint alleges that, in response, Bishop Jackson wrongfully caused the locks to be changed on the church building, posted security guards at the church building, and barred members of the Mother Church from using the building as a place of worship. The plaintiffs claim that neither Bishop Jackson nor the Conference have any ownership rights in, or right to control, the properties at issue, and that such rights reside solely in the Mother Church and its Trustees. The plaintiffs ask this Court to so declare.

The complaint also alleges that on April 6, 1991, after Bishop Jackson learned of the scheduled April 9, 1991 special meeting to consider seceding from the Conference, he caused

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[1] The original parties were the Trustees and Bishop Jackson. As a result of a suggestion made by the Court, the Mother Church and the Conference were later joined as parties plaintiff and defendant, respectively, to enable the Court to afford effective relief.

[2] Unfortunately the terminology is somewhat confusing, because the "Conference" is used to refer not only to the corporate defendant of which defendant Jackson is the Bishop, but also to describe the larger religious association with which certain local churches, including the Mother Church, were affiliated. See Part I, *infra*, of this Question.

deeds transferring the Mother Church's properties to the Conference to be executed and recorded. The plaintiffs further allege that those deeds were not authorized or executed by the plaintiff Trustees, and on their face are fraudulent and a cloud on the Mother Church's title. As a consequence, the plaintiffs seeks an order removing all existing clouds on the title to the Mother Church's properties, enjoining the defendants from further clouding the title, and from otherwise interfering with the plaintiffs' quiet title, use, and enjoyment of those properties.

At the time they filed their complaint, the plaintiffs also moved for a temporary restraining order and a preliminary injunction restoring their (and their congregation's) access to the church properties *pendente lite*. On April 19, 1991, after a hearing, the Court entered a temporary restraining order prohibiting the defendants from "interfering with the quiet title, operation, use, enjoyment and governance of the [Mother] Church facilities located at Ninth and Franklin Streets, Wilmington, Delaware by [the Conference]" during the particular days of the week and the times specified in that Order.

On May 6, 1991, after expedited discovery and briefing, a hearing was held on the plaintiffs' motion for a preliminary injunction. Supplementary memoranda were submitted on May 7, 1991.[3] This is the decision of the Court on that motion.

I.

The core issue on this motion is which corporation — the Mother Church or the Conference — owns and is legally entitled to control the contested properties. That issue turns importantly on two subsidiary questions: (1) which corporation holds legal title to those properties, and (2) if the Mother Church holds title,

[3] Thereafter, on May 8, 1991, the defendants submitted a large box of documents to the Court, unsolicited and with no cover letter explaining their relevance. The Court attempted to examine those materials, but has found nothing that sheds further light on the issues pertinent to this motion.

whether it has ceded to the Conference its ownership rights or its power to control the use and disposition of those properties. The facts now recited pertain to those questions. Except where noted, those facts are based upon uncontested documents, and are undisputed.

The Mother Church was incorporated as the "African Union Church" on September 18, 1813. (Jackson Dep., Exh. 9; A-150).[4] Article 2nd of that corporation's 1813 certificate of incorporation reads as follows:

> The said Corporation shall have, hold, possess and enjoy the temporal property which they have at this time or shall hereafter acquire. In trust for the Religious uses of the Ministers and Preachers of the said "Union Church" for them and their African Brethren and their descendants of African Race, and also for the Ministers and Teachers of the African Brethren duly licensed and ordained according to the Discipline adopted by this corporation.

Article 4th of that certificate delineates specific requirements that must be satisfied before any property of the corporation can be transferred or encumbered:

> The said Trustees nor their Successors shall not by deed or otherwise dispose of any part or portion of the Estates, real or personal, which may be vested in the said Corporation; nor Mortgage nor Pledge the same for payment of any Debts by them Contracted to any person or persons whomsoever, *unless the same shall be done with the consent of two thirds of the regular Members of the said Corporation.* (Emphasis added).

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[4] "A__" refers to the Appendix to the Plaintiffs' Opening Brief in Support of their Motion for a Preliminary Injunction.

Article 5th provides that an election shall be held for the membership to vote for Trustees of the corporation. One new Trustee will be elected each year, and that Trustee shall then serve a term of seven years. Article 5th further provides that:

> [T]he said Trustees and their successors shall have the entire direction and disposal of the temporal revenues and concerns of the said Church. . . ."

On July 14, 1924, the Mother Church's certificate of incorporation was amended to change the corporate name to "Mother African Union First Colored Methodist Protestant Church," *i.e.*, the Mother Church. (A155-157). Insofar as the record reveals, that amendment is the only one ever made to the 1813 certificate of incorporation; and it left unaffected the remaining provisions of the original 1813 certificate, including Articles 2nd, 4th, and 5th, which remain in force today.

The plaintiffs are the Trustees of the Mother Church, and the duly elected successors to the Trustees named in the original 1813 certificate. There is no claim or evidence that the plaintiffs were not duly elected as Trustees in accordance with the procedures spelled out in that certificate.

There also is no dispute that until April 6, 1991, the Church owned three properties in Wilmington, Delaware ("the properties"): (i) the church building, located at West Ninth and Franklin Streets, which was deeded to the Church on November 4, 1969 (A19-21); (ii) the Pastor's home, located at 125 West 38th Street, which was deeded to the Church on October 22, 1969 (A23-24); and (iii) Mount Olive Cemetery, located on Lancaster Avenue.

There is no evidence of record that the plaintiff Trustees ever transferred the properties to, or for the benefit of, any other person or entity, or that two-thirds of the corporation's regular members ever assented to any such transfer. Indeed, three of the Trustees, including the oldest living Trustee, have testified

by affidavit that the Trustees never authorized or executed a document, ratified by two-thirds of the corporation's members, that placed any asset of the Church in trust for the benefit of any other entity or organization. (A127-135). That evidence stands uncontroverted.

The other party litigant that claims ownership rights in the aforementioned properties is the Conference. For many years, the Mother Church has had a relationship of some kind with the Conference respecting their common spiritual enterprise. However, from a strictly corporate standpoint, the Conference and the Mother Church have always been separate entities. Although the defendants contended at oral argument that the Conference was the corporation founded in 1813 as the "African Union Church," the record shows otherwise. The Conference was incorporated on September 19, 1941 as the "African Union First Colored Methodist Protestant Church." On March 10, 1953 its certificate of incorporation was amended to change the corporate name to "The Conference of African Union First Colored Methodist Protestant Church," *i.e.*, the Conference.

Article THIRD of the 1941 certificate recites that one of the corporation's purposes was:

> To incorporate and unite the Church Government of the Colored Methodist Protestant Churches under the Doctrine and discipline of the African Union First Colored Methodist Protestant Church of the United States of American or elsewhere as particularly set forth in its Sixteenth Revised Printed Edition of said Doctrine and Discipline published at Wilmington, Delaware, September 8-14, 1926, and the Amendments and additions thereto as afterwards made.

Article THIRD also provides that the corporation was "created solely for Religious and educational purposes," and Article SEVENTH provides that the Conference's temporal affairs shall be conducted by that corporation's Trustees who:

> [S]hall have control of the disposal of the property of *the Corporation*, [and] shall also have power to make, amend, alter or rescind the By-laws of their respective Churches . . . subject, nevertheless to the Rules of Discipline of the General Conference, which General Conference shall in itself be created and established, and its membership shall be composed as set forth in the Rules of Discipline of said Church as hereinbefore referred to. (Emphasis added).

Consistent with Article SEVENTH, Article NINTH provides that:

> There shall be a general conference whose time and places of meeting and membership shall be as prescribed in the Book of Discipline and Doctrine of said Church, and the authority of such Conference shall be superior to that of the Trustees and Members of the individual Church and shall control and direct such Trustees and Members as is more fully from time to time prescribed in said Book of Discipline and Doctrine.

The precise relationship between the Conference and its member churches is anything but clear. What can be gleaned from the record is that the Conference was created as a corporate vehicle to carry out the purposes of an earlier-formed voluntary union, association, or affiliation of the various African Colored Methodist Protestant Churches in a spiritual and religious enterprise. That enterprise, which was formed in 1866, is sometimes described as the "Conference" or the "General Conference." The record further indicates that the terms and conditions of that union, association, or affiliation, are governed at least in part by the *Book of Discipline*, the 1990 version of which has been placed of record.[5]

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[5] The full title of that document is *The Book of Discipline of The African Union First Colored Methodist Protestant Church and Connection in the United States of America and The World.*

The Historical Preface to the 1990 *Book of Discipline* recites that a General Convention was held in Baltimore, Maryland on August 25, 1866. That Convention founded a General Conference and created a *Book of Discipline*. The preface goes on to state that the representatives of the African Union Church and the First Colored Methodist Protestant met in General Convention on November 25, 1865 and that the Convention resolved to adopt:

> [A] platform to unite the two branches of Zion into one Church, to be known and distinguished by the name of the African Union First Colored Methodist Protestant Church of the United States of America, or elsewhere.
>
> And to consummate this Union the General Convention does hereby constitute a General Conference, to consist of an equal number of delegates from each Church, to be held in the city of Wilmington, Delaware, on the morning of the 25th day of August A.D., 1866.

(Jackson Aff., Exh. 2, pp. ii-iii).

The resolution goes on to recite that the "First General Conference of the Representatives of the African Union Church, and the First Colored Methodist Church, assembled [and] did then and there form a book of discipline for their future government. . . ." (Jackson Dep., Exh. 2, pp. ii-iii).[6]

From the foregoing the following may be concluded, at least preliminarily: (a) The Conference is a corporation entirely distinct and separate from the Mother Church, having been incorporated 128 years after the Mother Church was formed, in order to carry out the spiritual and religious objectives of the

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[6] The record does not evidence the authenticity or authorship of that resolution, or that the Mother Church formally assented to its provisions. The plaintiffs concede, however, that the Mother Church was, while affiliated with the Conference, subject at least spiritually to the *Book of Discipline*.

General Conference that was established in 1866; (b) The two corporations have not merged, and their relationship, while not easily characterized, is defined at least in part by the *Book of Discipline* which, since its adoption in 1866, has been amended several times; and (c) However the relationship between those corporations may be characterized, there is no evidence that it supplants the power of the Mother Church's Trustees and membership to control the disposition of that Church's physical properties.

The instant litigation is the apparent culmination of a dispute between Bishop Jackson and the late Reverend Maynard Smith, the former Pastor of the Mother Church. According to Bishop Jackson, Reverend Smith was expelled from the Conference. (Jackson Aff., para. 13). When Reverend Smith died, the Bishop or some other agent of the Conference attempted to prevent the funeral from being held at the church building. The Trustees refused to accept that ruling, and allowed Reverend Smith's funeral to take place at the church building.

That and other disputes eventually led the Trustees of the Mother Church to convene a special meeting of the membership on April 9, 1991, to vote on whether to secede and disaffiliate from the Conference. At that meeting, 82 of the approximately 185 members of the congregation attended, and by a vote of 68 to 10 (with 4 abstentions), the members determined to secede from the Conference. The Trustees also voted to secede. (A133, 136).

In anticipation of, or in response to, those actions, Bishop Jackson and/or the Conference took certain measures. They were as follows:

a) On April 6, 1991, Bishop Jackson witnessed eight quitclaim deeds that were recorded with the New Castle County Recorder of Deeds. One of those deeds purported to transfer the contested properties from the Mother Church to the Conference. (A28-35). The deed was not signed or authorized by the plaintiff

Trustees. According to Bishop Jackson, the deeds were executed pursuant to authority granted by resolutions adopted at Conference meetings held on January 12, 1991 and April 6, 1991. (Jackson Aff., paragraphs 21-23). However, no minutes or other document evidencing the proceedings at those meetings were ever placed of record.

b) On April 8, 1991, Bishop Jackson removed then-Pastor Gunther, and replaced him by appointing Thomas E: Moon as Pastor of the Mother Church.

c) On April 10, 1991 the Bishop and/or agents of the Conference purported to remove the plaintiff Trustees "as trustees and as members of the Church, according to church law as set forth in the *Book of Discipline* and in the April 6th resolution . . . ." (Jackson Aff., para. 14). Apparently that was done, in part, because the Trustees had refused to accept Reverend Moon as the Pastor.

d) On April 14, 1991, Reverend Moon asked three persons to be the new Trustees of the Mother Church.[7]

After the April 9, 1991 secession vote, Reverend Moon, with Bishop Jackson's permission, caused the locks on the Church building to be changed and posted security guards outside. (Moon Aff., paragraphs 4-5). As a result, and until this Court issued its temporary restraining order, the members of the congregation were forbidden access to the church building and prevented from worshiping there.[8]

This litigation followed.

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[7] In his affidavit, Reverend Moon states that his Trustee-designees were elected by a "congregation." (Moon Aff., para. 7). That statement is, however, conclusory and contains no specific facts as to who comprised that "congregation" or by what process that election took place.

[8] It is also claimed that Bishop Jackson attempted to remove funds from the Mother Church's bank accounts and to put the Church's properties up for sale. Those claims are, however, disputed and need not be decided on this motion.

II.

This case represents but one aspect of a larger and highly regrettable controversy: a church divided. That lamentable circumstance inevitably leaves in its wake a host of spiritual and social problems, in addition to those purely legal. Who is now the minister of the congregation? Who are the Trustees? Who are and are not members of the Mother Church?[9] Of these questions this Court is competent to address only the legal, and even then only within the constraints of the First Amendment to the United States Constitution as interpreted by decisions of the United States Supreme Court.

Those decisions forbid civil courts from deciding church property disputes on the basis of religious doctrine and practice. Such courts may — indeed must — resolve such disputes only on the basis of "neutral principles of law," without considering doctrinal matters such as the "ritual and liturgy or the tenets of faith." *Jones v. Wolf*, 443 U.S. 595, 603 (1979) (quoting *Maryland & Va. Churches v. Sharpsburg Church*, 396 U.S. 367, 368 (1970)); *accord Presbyterian Church v. Hull Church*, 393 U.S. 440 (1969); *Serbian Orthodox Diocese v. Milivojevich*, 426 U.S. 696 (1976). Under a neutral principles approach, a civil court may consider, and resolve church property disputes on the basis of, sources such as state statutes, church corporate charters and constitutions, and the language of trusts, deeds and similar granting instruments. If, however, the interpretation of instruments of ownership would require the court to resolve a religious controversy, the court must defer that doctrinal decision to the authoritative ecclesiastical body. *Jones v. Wolf*, 443 U.S. at 604; *Serbian Orthodox Diocese*, 426 U.S. at 709.

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[9] To the extent this Court is empowered to answer those questions, the answer must await a final hearing. The questions are complex and cannot be decided at this preliminary stage. Indeed, neither counsel has fully briefed these questions.

Mindful of these highly sensitive concerns, the parties have cast their dispute largely on the basis of Delaware corporate and property law principles. And while the defendants have based certain of their preliminary injunction arguments upon the *Book of Discipline*, those arguments do not require this Court to interpret or determine religious doctrine. Essentially what must be decided at this preliminary stage is which corporation — the Mother Church or the Conference — owns the disputed properties. The remaining issues raised by the complaint (to the extent they are constitutionally cognizable) must await the final hearing.

The criteria on a motion for preliminary injunction are well established. The moving party must show probable success on the merits, imminent irreparable harm that will occur absent the injunction, and that the irreparable harm that would result if injunctive relief is denied outweighs the harm that would occur if relief is granted. *Ivanhoe Partners v. Newmont Mining Corp.*, Del. Supr., 535 A.2d 1334, 1341 (1987); *Robert M. Bass Group, Inc. v. Evans*, Del. Ch., 552 A.2d 1227, 1238 (1988).

In this case the harm threatened to the plaintiffs clearly will be imminent and irreparable if injunctive relief is denied. Such harm will also outweigh any likely harm to the defendants if relief is granted. What the plaintiffs will be deprived of is the unfettered use of their property, including their congregants' right to use the church building as a place of worship. Moreover, the defendants, by executing and recording the April 6, 1991 deed purporting to transfer the disputed properties to the Conference have seriously clouded the Mother Church's title to these properties. The harm occasioned by these acts is immediate and substantial, and it cannot be remedied except by an injunction. Nor is there any showing that granting preliminary injunctive relief would harm the defendants more than denying relief would harm the plaintiffs. The defendants intimate that the balance of equities favor their position, but offer no reasoned argument or any evidence to support their suggestion.

Consequently, this motion turns solely upon whether the plaintiffs have demonstrated that they will probably succeed on the merits after a final hearing. For the reasons now discussed, I find that they have, and that a preliminary injunction must issue.

III.

Any analysis of the claims pertinent to this motion must begin with certain fundamental, undisputed facts. Before April 6, 1991, title to the disputed properties resided in the Mother Church. On April 6, 1991, the defendants executed a deed purporting to transfer title to those properties to the Conference. The question, simply put, is whether that April 6, 1991 deed was authorized by persons lawfully entitled to act on behalf of the Mother Church. If so, then no basis for injunctive relief exists; if not, then injunctive relief must be granted. As discussed in Part III A, *infra*, only the Mother Church's Trustees, with the formal concurrence of two-thirds of the members, are empowered to transfer those properties, and those persons never authorized the April 6, 1991 deed. The defendants contend, nonetheless, that despite the authority vested in the Mother Church's Trustees and membership, the *Book of Discipline* and certain purported amendments thereto give the Conference superior, overriding authority over the disputed properties. For the reasons discussed in Part III B, *infra*, I find that the defendants' position has no probable merit.

A.

Article 4th of the Mother Church's certificate of incorporation provides that the Trustees "*shall not* by deed or otherwise dispose of any part or portion of the Estates, real or personal, which may be vested in the said Corporation . . . *unless* the same shall be done with the consent of two-thirds of the regular Members of the said Corporation." (Emphasis added). It is

undisputed that the plaintiff Trustees have never deeded any of the disputed properties to the Conference. Nor have two-thirds of the Mother Church membership ever approved any such property transfer or the execution of the April 6, 1991 deed.

Thus, based on the Mother Church's most fundamental corporate document – its certificate of incorporation – I find at the threshold that (a) the Mother Church owns the properties at issue, and (b) the April 6, 1991 deed purporting to transfer those properties to the Conference was void *ab initio*. For those reasons the plaintiffs have established a high probability of success on the merits of their claims, unless the defendants can demonstrate a superior claim of entitlement to the disputed properties. The defendants assert that they have demonstrated such a superior, overriding claim, arguing that (1) the Mother Church had always held the properties in trust for the Conference, and (2) representatives of the Conference possessed the requisite authority to transfer the properties on behalf of the Trustees.[10] I now address those contentions.

B.

The defendants premise their claim of superior entitlement upon their contention that the Conference is a hierarchical organization whose members (*i.e.*, the local churches, including the Mother Church) occupy a subordinate position that makes

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[10] In addition to their substantive contentions, the defendants raise two procedural defenses that, they urge, mandates the denial of injunctive relief. Defendants argue that the plaintiffs have no standing to seek relief because they are no longer members of the Mother Church. That argument, however, has been mooted by the joinder of the Mother Church as a party plaintiff. The defendants also contend that the Bishop is not a proper party defendant, because no relief would be effective as against him. That argument is mooted by the joinder of the Conference as a party defendant; moreover, the Bishop is a proper party defendant because the complaint, fairly read, alleges that the acts complained of were committed by him or by others acting under his control. Accordingly, neither procedural defense has colorable merit.

them subject to direction by the Conference in accordance with the *Book of Discipline*. The defendants rely upon two documents that, they claim are resolutions adopted by the Conference on January 12, 1991 and April 6, 1991, respectively, and constitute amendments to the *Book of Discipline*. The January 12, 1991 document pertinently provides that "titles to all properties held . . . by a local church . . . shall be held in trust for [the Conference]." (Jackson Dep., Exh. 3, p. 1). The April 6, 1991 document provides that "the ministers in charge of said [local] churches shall be empowered to sign official documents pertaining to the individual local church and the Conference. . . ." (Jackson Dep., Exh. 4). Based upon those documents, the defendants conclude that the April 6, 1991 deed transferring the properties to the Conference was valid, because (i) those properties were held in trust for the Conference, and (ii) the local minister had the authority to execute a deed transferring the Mother Church's property, notwithstanding the Trustees' and the members' authority conferred by the 1813 certificate of incorporation.

These arguments have no merit for several reasons.

First, while a hierarchical relationship between the Mother Church and the Conference may arguably exist in the religious and spiritual realms,[11] no such relationship has been shown to exist in the temporal realm that governs the ownership and control of the Mother Church's properties. The Mother Church's 1813 certificate of incorporation expressly provides the procedure by which any transfer of the corporation's assets must take place. To validly cede to another entity the Mother Church's power to dispose of its assets, the 1813 certificate provision mandating that procedure would have to be amended in an appropriate way. That has never occurred.

[11] The Court expressly disclaims making any finding as to whether a hierarchical relationship exists in the religious and spiritual realms. Even if such a finding were within this Court's sphere of competence, it is unnecessary to a resolution of the pending motion.

Second, it is undisputed that neither the plaintiff Trustees nor their predecessors have ever executed any document, ratified by two-thirds of the Mother Church's members, placing any of the Mother Church's assets in trust for the benefit of any other entity. Nor has any other evidence of a trust arrangement, particularly evidence that would satisfy the evidentiary requirements of the Statute of Frauds, been submitted. *See* 6 *Del. C.* sec. 2714(a). *See also* 76 Am. Jur. 2d, *Trusts*, sec. 44 at 290-91, 294 (1975).

Third, by the defendants' own characterization, those documents occupy, at best, the status of By-laws of the Mother Church. Assuming without deciding the validity of that characterization,[12] the January 12th "by-law" placing local church properties "in trust" for the Conference runs afoul of the principle that where a by-law conflicts with the provisions of the charter, the by-law is a nullity. 8 *Del. C.* sec. 109(b); *Centaur Partners v. Nat. Intergroup, Inc.*, Del. Supr., 582 A.2d 923, 929 (1990); *Burr v. Burr Corp.*, Del. Ch., 291 A.2d 409, 410 (1972). The January 12th document conflicts with the 1813 certificate of incorporation, because Article 2nd of the certificate states that the land is held in trust for the religious uses of the "said Union Church," which is now the Mother Church – not the Conference.[13] The April 6th document (which purports to empower the minister to transfer church property on behalf of the

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[12] For present purposes, the Court simply accepts *arguendo* Bishop Jackson's characterization that the *Book of Discipline* contains the current rules of the Church, which are the "by-laws of the corporation." (Jackson Aff., para. 9). Defendants' counsel also advocated that characterization at oral argument.

[13] At oral argument, defendants' counsel relied upon Article 2nd of the 1813 certificate of incorporation, which states that the church properties are held in trust for the religious uses of the "said Union Church." Counsel argued that the "Union Church" and the Conference were one and the same. However, the evidence shows precisely the contrary: the Conference (as an association) did not come into existence until 1866, and it did not take a corporate form until 1941. The 1813 certificate could not possibly have created a trust relationship in favor of an organization that did not then exist.

Trustees) conflicts with the certificate of incorporation, because Article 4th prohibits *any* disposition of Church assets without the approval of the Trustees and two-thirds of the corporation's members. Again, no such consent was given here.

Fourth, the documents, by their own terms, do not create any superior title or claim of title in the Conference. Section II of the January 12th document states that "All provisions of the Discipline relating to property . . . and relating to the formation and operation of any corporation . . . are conditioned upon their being in conformity with the local laws, and in the event of conflict therewith [sic] the local laws shall prevail. . . ." (Jackson Dep., Exh. 3, p. 3). "Local law" is defined to include "the laws of the county, state, or other like political unit within the geographical [sic] bounds of which the church property is located." *Id.* Thus, by its own terms, the January 12th "by-law" trust provision gives way to local law. Under local law, the Mother Church clearly owns the properties. See Part III A, *supra*. And while the April 6th document purports to empower the minister in charge to sign official documents pertaining to the individual local church, it does not authorize the minister to do so without the consent, or over the opposition, of the Trustees in matters where Trustee approval is required.

Fifth, the January 12th and April 6th documents do not constitute credible evidence that the Conference ever took the actions that the defendants attribute to it. Neither document appears on the stationery of the Conference: the letterhead is of an organization having a different name. The record contains no minutes or other documents evidencing official action taken by the Conference on those dates — only the Bishop's conclusory affidavit testimony is offered. Indeed, the Court is uncertain as to what these documents truly represent and the basis of their authenticity. Are they resolutions? Of what body? Are they part of the *Book of Discipline*? By what authority? While answers to these questions may well be forthcoming at

the trial stage, no answers have been provided here. On the present record these documents appear to be self-serving and, in all events, are unpersuasive.

IV.

Having determined that the plaintiffs are entitled to preliminary injunctive relief, the Court must next decide what form that relief should take. One alternative is to continue the temporary restraining order in effect until this action is finally determined on its merits. The other alternative, which the plaintiffs advocate, is to enter an order that would effectively restore to the plaintiffs unrestricted control of the properties, *pendente lite*.

Because of the Court's preliminary rulings and of the issues still remaining to be determined at final hearing, there are several open questions that concern the governance of the Mother Church, and, consequently, the management of its property and affairs. These questions include the identity of the lawful Trustees and congregation, and whether the Mother Church has lawfully disaffiliated from the Conference. Should those questions be resolved in favor of the Conference, one result may be to empower the defendants to influence in some (as yet undefined) manner the management and disposition of the Mother Church's properties.

Given these uncertainties, the Court is persuaded that a form of interim injunctive relief that would altogether exclude the defendants from access to the Mother Church's properties at this stage is inadvisable. It would risk irreparably prejudicing the defendants' position before the case has been adequately presented and decided. That observation is not intended in any way to suggest my view of the ultimate outcome, but only to strike an appropriate interim balance between the legitimate interests of both sides. That balance, in my view, is best struck

by (i) continuing the temporary restraining order in effect until this action is finally determined on the merits, and (ii) scheduling a final hearing on an expedited basis, consistent with this Court's other commitments. That result will permit both sides of the dispute to have access to the church building until this litigation is resolved, and will minimize the risks inherent in giving either side unfettered control of the properties at this preliminary stage.

Accordingly, the plaintiffs' motion for a preliminary injunction is granted. The temporary restraining order previously entered shall remain in effect until further order of the Court. Counsel shall promptly confer with each other, and then with the Court to schedule expedited discovery and trial.

IT IS SO ORDERED.

IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF COLUMBIA

THE CONFERENCE OF AFRICAN UNION FIRST COLORED METHODIST PROTESTANT CHURCH and REV. R. C. SCOTT, and RICHARD GROSS,
Plaintiffs,

v.

WALTER C. CLEAVER and ROBERTA HARPER, et al.,
Defendants.

Civil Action No. 2960-53

Filed: 25 July 1955

FINDINGS OF FACT AND
CONCLUSIONS OF LAW

The Court having considered the briefs filed by the parties upon a motion to dismiss the complaint made by the defendant on March 27, 1955, and having denied the motion, the above action came before the Court for trial on June 2, 1955. The Court, upon the entire record in the case, including testimony and oral argument,

makes the following findings of fact and conclusions of law.

I. Findings of Fact

1. African Union First Colored Methodist Protestant Church is a general church organization, or religious denomination, tracing its origin back to 1812, and having a Book of Discipline adopted by the denomination formulating and prescribing structure and relationship of subordination of member churches, or units, to the general religious organization.

2. One of the plaintiffs, viz., The Conference of African Union First Colored Methodist Protestant Church, a corporation organized under the laws of the State of Delaware, is the corporate embodiment of said general church organization. Another plaintiff, Richard Gross, is a member of St. Paul African Union First Colored Meth-

odist Protestant Church and has adhered to and continued to adhere to the Discipline and authority of the general church organization, or religious denomination. The third plaintiff, the Reverend Reese C. Scott, is president of the general church organization.

3. The defendant, St. Paul African Union First Colored Methodist Protestant Church, is organized as a corporation under laws in force in the District of Columbia, is a subordinate member church, or unit, of the said general church organization, or religious denomination, has subscribed and adhered to the Book of Discipline of said denomination, dedicated its property to the uses and purposes of said religious denomination, and for many years prior to June 15, 1953, received and employed pastors from said general church organization.

4. The property of the defendant corporation consists principally of a church building, with appropriate furniture and furnishings, situate at No. 326 I Street, Southeast, in Washington, District of Columbia.

5. On or about June 15, 1953, defendant severed "all connections" with the general church organization, the African Union First Colored Methodist Protestant Church, changed its name from "St. Paul African Union First Colored Methodist Protestant Church" to "St. Paul Methodist Church" and diverted said church property to the uses and purposes of the new and different "St. Paul Methodist Church." It also refused to permit the church property to be used by ministers of the general church organization.

II. Conclusions of Law

1. The Court has jurisdiction of this

action to enjoin the diversion of property, the legal title to which is held by a member church, or unit, of a general church organization, and which property had been dedicated to the uses and purposes of such general church organization, or denomination, to different, antagonistic or inconsistent uses and purposes.

2. The defendants, having diverted the property of St. Paul African Union First Colored Methodist Protestant Church to uses and purposes different from, antagonistic to or inconsistent with the uses and purposes of the general church organization known as African Union First Colored Methodist Protestant Church, have no right to such property.

/s/ J. W. Morris
Judge

IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF COLUMBIA

THE CONFERENCE OF AFRICAN UNION FIRST COLORED METHODIST PROTESTANT CHURCH and REV. R. C. SCOTT, and RICHARD GROSS,
Plaintiffs,

v.

WALTER C. CLEAVER and ROBERTA HARPER, et al.,
Defendants.

Civil Action No. 2960-53

Filed: 25 July 1955

ORDER

Upon the basis of findings of fact and conclusions of law filed herewith, it is by the Court, this 25th day of July 1955,

Ordered:

1. That the defendants immediately cease to use the parcel of real property and the furniture and furnishings there situate at No. 326 I Street, Southeast, in Washington, District of Columbia, in any

manner inconsistent with or for any purposes other than the purposes of the religious denomination known as African Union First Colored Methodist Protestant Church.

2. That the defendants make only such use of the said property as is in conformity with the purposes of said religious denomination.

3. That the defendants pay the costs of this action.

/s/ J. W. Morris
Judge

IN THE COURT OF CHANCERY OF THE STATE
OF DELAWARE IN AND FOR NEW CASTLE COUNTY

MOTHER AFRICAN UNION FIRST COLORED METHODIST PROTESTANT CHURCH, et al.
Plaintiffs,

v.

THE CONFERENCE OF AFRICAN UNION FIRST COLORED METHODIST PROTESTANT CHURCH, et al.,
Defendants.

C. A. No. 12055

APPLICATION TO WITHDRAW APPEARANCE

COMES now the Defendants' attorney K. Kay Shearin and respectfully moves this Honorable Court, pursuant to Chancery Court Rule 5(aa), for an order withdrawing her appearance in this matter, and in support of this motion she avers:

1. On 2 April the Court purported to order me to transmit information from a member of the putative Plaintiff class in this case to Pastor Moon about scheduling a funeral at the Mother Church, and I refused, openly and based on an assertion

that the order was not valid, as Lawyers' Rule 3.4(c) requires.

2. I believe that order was procedurally invalid because, inter alia:

a. I am not a party to the litigation, and I have a right to due process before the Court exercises personal jurisdiction over me, and Rule 70 provides for the Court to issue orders only to parties;

b. Rule 7(b)(1) requires a motion on the record before the Court issues an order; and

c. an order must be on the record before it can be enforced, and Sup.Ct.R. 7(c)(3) requires a notice of appeal to designate the order to be reviewed, but the Court refused to put the order on the record.

3. I could not obey the Court's order without violating the Lawyers' Rules because, inter alia:

a. the Book of Discipline, at Article X, gives the pastor of the local church authority to schedule the church's use and does not authorize the presiding bishop to interfere, and my client Bishop Jackson has directed me not to interfere where he is not authorized to do so;

b. the Book of Discipline, at Article XIV, provides that the pastor is employed by the local church, so Pastor Moon is the Mother Church's agent, not the Conference's, and therefore the Court was ordering me to carry messages from my client's adversary to their own agent, a direct conflict of interest under Lawyers' Rule 1.7;

c. the Court was in fact ordering me to provide legal services to my client's adversaries without compensation, and a court cannot require an unwilling attorney to represent even an indigent party in

a civil case without compensation [Mallard v. United States District Court, 490 U.S. 296 (1989)];

d. the Bishop and I both believe that entering the TRO and preliminary injunction in this case violated the Constitutional requirement of separation of church and state, and for me, "as an officer of the Court," to participate in scheduling the church's rituals would be a direct violation of Lawyers' Rule 8.4(f);

e. The Book of Discipline, at p. 20, forbids anyone except a member in good standing to hold any office in the Church, and I am not a member, and the Court was in effect assigning me the office of scheduling rituals; and

f. one of the basic requirements for membership is a profession of belief in the Church's doctrine, set forth at pp. 11-18, and I do not subscribe to those beliefs or,

indeed, to any Christian beliefs because I am a pagan, a follower of the religion the Hebrews spent much of the Old Testament trying to eradicate, and my religious beliefs are abhorrent to many Christians, and it would be an unconscionable violation of both my First Amendment right of free exercise of religion and my clients' to force me, with such antithetical religious views to theirs, to participate in scheduling their rituals.

4. I am now in the untenable position that if I continue to represent my clients, the Court may again order me to participate in scheduling church rituals: I cannot do so without violating the Constitution and some of the Lawyers' Rules, and I cannot refuse without violating the Court's order, so Lawyers' Rule 1.16(a)(1) requires me to withdraw from representation.

5. Now that the Plaintiffs are moving

against me personally, I shall become a witness in the litigation, and therefore Lawyers' Rule 3.7(a) requires me to withdraw.

6. The conflict between my interests and my clients' is apparent in our disagreement over this motion: Although I am required by the Lawyers' Rules to withdraw, my clients oppose my withdrawal and ask the Court to deny this motion under Lawyers' Rule 1.16(c).

7. Bishop Jackson says if I am allowed to withdraw he will not obtain other counsel but will proceed pro se because, inter alia:

a. as the individual Defendant and the CEO of the corporate Defendant, he is satisfied with my work, and I am handling two related cases (one in Chancery, one in federal court in New Jersey) for one or both of the same clients and so am more fa-

miliar with the facts and issues than any lawyer he could hire now;

b. if he did find another lawyer, that lawyer would probably be in the same ethical dilemma very shortly; and

c. as we are hopeful the Court will deliver its decision in this case shortly, there should not be very much left to do in this case, and it should not remain open for very long.

8. Bishop Jackson wants me to remain his lawyer, instead of having to proceed pro se, because he has a full-time job in Maryland, and his employer is displeased when he has to be absent, so it would be a personal hardship for him to have to take off from work to attend proceedings.

9. I submit that although the Court may have to hear the Bishop and me, on the record, before ruling on this motion, the Plaintiffs have no standing to take any po-

sition in this conflict between my client and me, and therefore they cannot file any brief in answer to this motion and cannot argue at any hearing on it.

10. I further submit that the existing conflict of interests makes it inappropriate for the Court to order briefing on the motion from either the Bishop or me, either.

Respectfully submitted,

K. Kay Shearin
Attorney for Defendants

Dated: 6 April 1992

TEXT OF 18 SEPTEMBER 1991 LETTER

FROM DEFENDANTS' COUNSEL

TO CHANCERY COURT IN C.A.NO. 12055

Dear Vice Chancellor Jacobs:

When I got home from court on Tuesday I had a message from Pastor Moon saying he had been thrown out of the courthouse; when I called him back he told me that about 2:15 p.m. Tuesday, in the hall outside the courtroom where you were trying the case, Mr. Neuberger took back the subpoena served on Pastor Moon, told him he would not be called to testify, and ordered him off the premises. I asked the pastor if he could have made any mistake about what Mr. Neuberger said, and he said not, that Mr. Neuberger said if he stayed in the courthouse Mr. Neuberger could change his mind and make him testify after all, so he had to leave the courthouse. The pastor did not want to leave, he wanted to come into the

courtroom and observe the rest of the proceedings, in which he has substantial interests.

Mr. Neuberger's conduct was outrageous. He knows that I represent Pastor Moon, yet he presumed to give him gratuitous legal advice about his exposure to service of another subpoena and prevented him from entering the courtroom to consult me. Mr. Neuberger must know that any person had the right to enter that courtroom--that is what "open court" means--and, as the Bishop's appointee to the Mother Church, Pastor Moon is the person who will be most affected by the outcome of this trial.

There is no way to remedy this situation now, but the pastor is upset about it, and I am furious. Now that it has been brought to your attention, I trust you will deal with it as, and if, you think warranted.

/s/ K. Kay Shearin

TEXT OF 11 MAY 1992 LETTER

FROM DEFENDANTS' COUNSEL

TO CHANCERY COURT IN C.A.NO. 12055

Dear Vice Chancellor Jacobs:

This is the letter you directed me to submit by today responding to the question of whether I have violated Rule 11. I respectfully submit that I have not, and I do not understand the basis for your suggestion that I have.

I said in my 9/18/91 letter to you that Mr. Neuberger knew I represented Pastor Moon but had given the Pastor legal advice, and wrong advice at that, about his exposure to service of another subpoena. That was true--I had represented Pastor Moon and the Mother Church before this case was filed and said so in a 4/17/91 letter to the Mother Church's bank. I said in my application to withdraw my appearance that Pastor Moon is the plaintiffs' agent, and

that is true, too--the Book of Discipline provides that the pastor is hired by the local congregation, so the Pastor is the Mother Church's employee and always has been.

It is not uncommon for an employee of a corporation to be engaged in litigation with that employer and to have a lawyer advising and representing him. In my personal and professional experience, what usually happens is that anything about the litigation is communicated via the parties' attorneys, but the parties continue to communicate directly within the employment relationship. By that I mean that when I was an employee suing my employer, my lawyer notified me when she received a communication from my employer's attorneys about the litigation, but there was no change in the way my supervisor and I communicated about business matters in the course of my work.

That is the same situation we have here: It was improper for Mr. Neuberger to give Pastor Moon legal advice about his status as a witness in the litigation because I am the Pastor's lawyer, but scheduling funerals is the Pastor's job, and telling him to do so is squarely within his employment relationship with the plaintiffs and nothing to do with the litigation.

When this suit was filed, it created the potential for conflicts of interest between the Conference and the Pastor, so I advised both those clients of that possibility, and they both consented to my continued representation, but the relationships between the parties to the litigation and the Pastor have made the line I have had to walk rather narrow. I believe that I have complied with the letter and spirit of every applicable ethical rule, and the fact that the disciplinary panel

reviewed my conduct and unanimously dismissed all allegations against me on 27 January encourages me in that belief.

I repeat, I do not understand what inconsistency you perceive in my representations to you, but I hope I have sufficiently addressed the issue.

/s/ K. Kay Shearin